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JAMES BROWN SCOTT
DIRECTOR

The Conference of 1907

VOLUME III

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VOLUME III

SECOND, THIRD AND FOURTH COMMISSIONS

Ministry for Foreign Affairs

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(See vol. i, pp. 125-9[125-9], 150-64[150-64]; vol. iii, pp. 37-93[40-98])

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(See vol. i, pp. 63-5[66-8]; vol iii, pp. 557-72[553-69])

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(See vol. i, pp. 86-8[89-90]; vol. iii, pp. 343-66[341-64])

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SECOND SUBCOMMISSION

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(July 2, 1907)

Amendments to the Hague Convention of July 29, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864. Reporter: Mr. LOUIS RENAULT

(See vol. i, pp. 63-5[66-8]; vol. iii, pp. 293-342[293-340])

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(July 27, 1907)

Rights and duties of neutral powers in naval war. *Reporter:* Mr. LOUIS RENAULT.

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MEETINGS OF SEPTEMBER 11 AND 12, 1907

Rights and duties of neutral powers in naval war. Reporter: Mr. LOUIS RENAULT.

(See vol i, pp. 276–9[282–5]; vol. iii, pp. 463–518[460–514], 573–622[569–618])

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SECOND COMMISSION

FIRST MEETING

JUNE 22, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting was opened at 2:45 o'clock.

The President delivered the following address:

GENTLEMEN: I duly feel the honor conferred on me in selecting me to preside over this very important Commission, and as I did not have an opportunity in the plenary meeting to thank the assembly for it, you will permit me to do it to-day,—both for myself and for the little country of which I am delegate.

His Excellency Mr. NELIDOW, in opening the Conference, reminded us of the origin of our Conferences, and set out the grandeur of their aim in eloquent terms.

Allow me to add that in taking this noble and humanitarian initiative, Russia remained faithful to traditions that were very ancient and constantly maintained.

As far back as the eighteenth century CATHERINE II, and in 1800 PAUL I, determined the rules of armed neutrality and obtained their recognition.

In 1816, at the Congress of Vienna, ALEXANDER I proposed a conventional limitation of armament for times of peace. This was the object of his celebrated letter to Lord CASTLEREAGH, so often cited.

At the Congress of Paris, in 1856, when on the subject of the relations of Europe with the Porte, Lord CLARENDON proposed obligatory mediation, it was again Russia who supported it most strongly.

In 1868 Emperor ALEXANDER II brought about the meeting of the international military conference at Saint Petersburg. It was there, I think, that for the first time was proclaimed that fundamental rule that belligerents should do only what damage is strictly necessary. From that time dates the prohibition of the employment of explosive bullets weighing less than 400 grams.

At almost the same time took place the Geneva Convention for the amelioration of the condition of the sick and wounded in time of war.

It was again Russia who proposed in 1874 the meeting of the Brussels

Conference which, for the first time, had the object of the regulating of [4] laws and customs of war; our colleague MARTENS took a large part in it, and I too was present. Finally, in 1899, it was on the initiative of Emperor NICHOLAS II that the first Hague assembly met. A very vast plan was laid out for it: on the one hand the reduction of armaments on land and on sea through a pacific understanding; on the other, the organization and extension of arbitration, and, in the case that war could not be avoided, a lessening of its horrors, by the adoption of rules intended to reduce them to a minimum.

Assuredly, gentlemen, our efforts remained fruitless along many lines, and the Minister of Foreign Affairs of the Netherlands, in welcoming us, was quite right in saying that the work of 1899 had been the object of more than one criticism. But who could expect that so complex an end should be obtained at the outset? And would it not really be unjust to ignore the results that were obtained? The institution of a permanent international bureau, always ready to receive communications concerning any disagreement, the regulation of a procedure settled in all details, and the establishment of lists of arbitrators and the right to choose them even outside these lists, are all these nothing? That ingenious institution of international commissions of inquiry, due to our eminent colleague Mr. MARTENS, which so soon demonstrated its great usefulness, is this nothing? And is it nothing to have brought to a successful use that regulation of the laws and customs of war which had been unsuccessfully attempted at the Conference of Brussels? Have we not in a general sense realized in almost all of its application the program sketched at Saint Petersburg in 1868, limiting the evils of war to what is indispensable?

To judge the merit of a work even though incomplete, is it not sufficient to observe its results? Is it not to the Hague Conventions that is due the progress that has been made in these later years by the ideals of peace, conciliation and arbitration?

From 1900 to 1905 very numerous difficulties of various importance have been settled by arbitration; treaties not less numerous have been concluded, and there is a large number of them which advancing beyond our conventions make arbitration obligatory in those cases where it is practicable to do so. Here is our younger sister, the young American Union, which embraces the two continents of that hemisphere, mingling with us on the blessed ground of peace, so that for the first time in history all the universe is found entwined with the ties of the same convention of peace.

I think, therefore, gentlemen, that it is with confidence we may resume the work of 1899 in order to better it. We shall strive to realize the new progress that public opinion demands, and to that end it will suffice us to be inspired more than ever with those grand principles of humanity and fraternity, which even in times of war should regulate the relations between men. (*Applause.*)

The PRESIDENT then takes up the various preliminary questions that the Commission should settle, and proposes that it be divided into two subcommissions, and that the topics on the program be assigned among them as follows:

First subcommission: "Ameliorations in the laws and customs of war on land" and "Declarations of 1899."

Second subcommission: "Rights and duties of neutrals on land" and "Opening of hostilities."

His Excellency Mr. BEERNAERT reserves for himself the presidency of the first of these subcommissions and proposes the name of his Excellency Mr. ASSER, delegate of the Netherlands, for the presidency of the second.

These proposals are adopted unanimously.

[5] The PRESIDENT invites the members of the Commission to enrol themselves with the secretary general in one of these subcommissions or in both, as they wish. He calls their attention to the necessity of doing this as soon as possible.

He then begs the delegates who may have projects to file with the bureau to do so immediately, for the Commission is ignorant of the modifications which

may be intended to be introduced in the usages of war, and of the proposals that may be formulated regarding the declaration of war, and it is important that these serious questions be studied with precise texts.

General Amourel announces that he intends in the name of the French Government to file two projects, on "the rights and duties of neutrals"¹ and on "the opening of hostilities."²

The President asks him to file these very soon so that they may be printed and distributed before the first meeting of the subcommissions.

With reference to the work of the second subcommission his Excellency Mr. TCHARYKOW asks the President to grant the floor to General YERMOLOW for a communication concerning the opening of hostilities.

Major General Yermolow delivers the following address:

The question that our greatly honored President has just submitted to our attention is part of the Russian program and I therefore permit myself to define its meaning in a few words.

Before having the honor to lay before the high assembly the precise terms in which it would seem possible to me to state this question, I beg your kind attention for some general considerations of this subject, and hope you will examine the question of the opening of hostilities in its most extended meaning, and clarify it by interchange of views.

Gentlemen, the present state of this question, from the view-point of international legislation, is absolutely undetermined. Neither the lessons of history nor the profound study of the most eminent authors, nor the attentive reading of treatises on international law can furnish precise indications capable of establishing any point of view that is uniform and fixed.

Between the opinions of different States, as between those of jurists and writers of authority, there exists on this matter a wide divergence. If we consult the pages of history we shall find instances most dissimilar. We shall find cases where the first gun-fire had been preceded by certain diplomatic steps, and others, on the other hand, when hostilities began without a declaration of rupture or war. In whatever way the facts of history present themselves it would seem, gentlemen, that since the question has never been settled by international act, each country has the right to assume that its own point of view is the true one, and that each nation has the right to act as seems good to it. In short, really no written law exists, every opinion has a legal right to exist. It is incontestable that at the present time there is no written law prohibiting a nation from opening hostilities at any time whatever, even in the midst of profound peace.

Aside from this consideration, gentlemen, which, naturally, weighs heavier upon war preparations in time of peace, there are others that render the study of this question desirable. Thus we see that in the present state of the question, the precise point of time in law, although very important, of the beginning of a state of war between belligerents, can be defined only with great difficulty.

[6] Indeed, from what moment are the normal relations of peace displaced by the relations of war? It is often impossible to say. However, the almost mathematical fixing of that moment, the circumscribing of war in time, just as it is already more or less circumscribed in space, is of capital importance. War nowadays affects too many interests, changes and destroys too many relations and things for it to be otherwise. This being so, gentlemen, the question that

¹ Annex 24.

² Annex 20.

arises is as follows: do you wish the present state of the question, the "*status quo*" of affairs, the principle, so to speak, of "*carte blanche*" to be sanctioned and maintained? Or, would you rather that the Powers come to an agreement in this matter in some way or other? I recall the attention of this high assembly to the fact that if we do not arrive at any decision, or any new principle, this will already be a solution of the question, which I for my part as the representative of the Imperial General Staff would be quite ready to accept. It is true that in this case we shall have to say to the nations that have sent us here that nothing has been changed, that all that was not legally prohibited in the past will remain legally permitted in the future. Our countries must bear the consequences of this solution.

What consequences? Why simply, gentlemen, armaments and preparations in time of peace will have to increase.

The brief analysis of the question that is submitted to your examination shows us that the question may have several solutions:

First: We might maintain and sanction the present indeterminate state, or

Secondly: We might perhaps succeed in reaching a certain international regulation. We might, perhaps, distinguish between the moment of rupture of peaceful relations and that of the commencement of military operations.

The two moments might coincide or admit of a certain interval of time between them, however short it might be.

Gentlemen, existing international legislation has already succeeded in limiting or rather in circumscribing war as to space: this restriction is attained by defining the territories over which war may legally extend without overstepping certain inviolable and neutral limits. International legislation has also distinguished between combatants and non-combatants. Why should we not also attempt to circumscribe war as to time by defining as exactly as possible the moment from which all must be quiet except the voice of arms? At the present time, this moment is of interest not only to the adversaries but to the entire world. It is from this moment that all other countries become neutrals, a situation which gives them certain rights and imposes on them certain duties. By this fact alone you will see, gentlemen, that the precise moment of the opening of hostilities has great international importance. I have therefore the honor, gentlemen, to propose for your discussion the following terms: "Does the Conference wish to maintain the question in its present indeterminate state, or does it wish to regulate it to some extent?"

In examining the question that I have just had the honor to state, you will easily see, gentlemen, that if we succeed in introducing some international regulation, we shall thereby succeed perhaps in making some decisions that might contribute to the well-being of the nations. From this point of view the statement that I have had the honor to make to you will therefore be also in accord with the large, humanitarian and generous thoughts that have inspired the First and continue to inspire the Second Peace Conference.

[7] The **President** observes that the remarks of Major General YERMOLOW cannot be usefully examined by the Commission until presented in the form of a written proposal. He asks him to file one.

Mr. **Kriege** files in the name of the German delegation a proposal on the "treatment of neutral persons in the territory of belligerent parties."¹

¹ Annex 36.

In the name of his Government, His Excellency Mr. **Carlin** makes the following declaration:

At the beginning of the work of our Commission the delegation of Switzerland is happy to apprise it that the Confederation, in a spirit of conciliation and international understanding, has just adhered to the Convention of July 29, 1899, concerning the laws and customs of war on land. In making use of the powers stipulated by Article 4 of the said Convention, I have had the honor, by order of the Swiss Federal Council to make to the Government of her Majesty the Queen of the Netherlands the notice of this fact which will be communicated by it to all the other contracting Powers.

The **President** thanks the delegate of Switzerland for this communication and takes pleasure in expressing the satisfaction on this new progress in the way of union

His Excellency Mr. **Lou Tseng-tsiang** likewise declares that the Government of Peking has authorized him to sign the same Convention.

The **President** also observes that he is greatly pleased with this adhesion.

The **PRESIDENT** proposes to settle the question of the reporters and the minutes. He proposes to the Commission to follow the proceeding of 1899 which consisted in giving the press every day a brief account, while at the same time the designated secretary kept more complete notes, but without official character, for the members of the Commission, this procedure having the advantage of leaving to them all their freedom and of keeping for the discussion a freer and more intimate character, by permitting even "a change of opinion without having an indiscreet minute state it"

The **PRESIDENT** having added that these notes should be read at the beginning of each meeting in order to undergo the necessary corrections, his Excellency Mr. **Martens** observes that Article 11 of the Regulations of the Conference¹ provides for the printing of these minutes and their delivery in proof-sheets to the members of the Conference in due time, without their being read at the beginning of the meetings.

The **President** supports that manner of proceeding, which is accepted under the reservation that the proofs may be corrected before printing.

He finally makes it known that the Commission should decide whether it shall designate its reporter before or after the discussion. He recalls that the question was raised in 1899 in plenary commission, and that, on the motion of Mr. **DESCAMPS**, it was decided that he should be named at once so as better to report the general features of the discussion, without introducing his own personal opinion.

It is decided that it will be so done and the two reporters will be nominated in the first meeting of the two subcommissions.

His Excellency Mr. **Asser** asks that the rolls of these subcommissions be given to the secretary general before Tuesday.

The meeting adjourned at 3:15 o'clock.

¹ See vol. i, p. 52 [55].

SECOND MEETING

AUGUST 14, 1907

His Excellency Mr. Beernaert presiding.

The meeting opens at 10:15 o'clock.

The minutes of the first meeting are adopted.

The **President** states that the Second Commission has received the report of Major General Baron GIESL VON GIESLINGEN on the work of its first sub-commission and that it is called upon to pass on the decisions proposed by it relating to the amendments submitted.

Its program includes two questions:

1. *Examination of the amendments proposed by various delegations to the Regulations of 1899 concerning the laws and customs of war on land;*

2. *Renewal of the Declaration of 1899 relating to the prohibition of throwing projectiles from balloons.*

The **PRESIDENT** in response to a remark of Mr. LOUIS RENAULT announces that the texts adopted by the Commission will be printed at the end of the report, opposite the corresponding texts that they are intended to replace, in order to facilitate a definitive vote on them in the next plenary meeting of the Conference.

The Commission passes to the examination of the amendments proposed to the Regulations of 1899 concerning the laws and customs of war on land.

The **President** reads the articles of the Regulations¹ and the amendments presented.

ARTICLE 1. *German proposal*²

The **PRESIDENT** first takes up the German amendment relating to Article 1, tending to require *previous notice* to the hostile party of *fixed distinctive emblems recognizable at a distance*. He recalls that this amendment was rejected by 23 votes to 11, and asks whether it is again advanced by the German delegation.

On the negative answer of Major General VON GÜNDELL, he considers it useless to put the question to discussion and passes to Article 2.

[9]

ARTICLE 2. *German proposal*³

As nobody desired to speak on the second amendment proposed by the German delegation to the effect that in *levées en masse* the population of an occupied territory would be recognizable by the fact of *carrying arms openly*,

¹ Annex 16.

² Annex 2.

³ *Ibid.*

this amendment having been adopted by the subcommission by a majority of 30 votes against 3 with 2 abstentions, was accepted by the Commission.

ARTICLE 4. *Japanese proposal*¹

The President asks if the delegation of Japan again takes up its amendment relating to Article 4 with a view to enlarging the number of objects that cannot be left to prisoners, although belonging to them personally. This amendment, said he, was rejected by 29 votes to 6.

His Excellency Mr. Keiroku Tsudzuki having declared that it would not be taken up again, the President states that it is definitely rejected.

ARTICLE 5. *Cuban proposal*²

The Cuban amendment completing Article 5, with a clause according to which prisoners of war can be interned "*only while the circumstances which necessitate the measure continue to exist*," was adopted by a very strong majority, and, as the United States later cast its vote for the measure, unanimously. After having mentioned this adhesion the PRESIDENT declares the amendment adopted by the Commission without opposition.

ARTICLE 6. *Spanish and Japanese proposals*³

It was the same with the first Spanish amendment relating to work by prisoners of war, and with the amendment thereto, accepted by the delegation of Spain relating to their employment *according to their aptitude*, and also *according to their rank*; the Commission accepts them also without opposition as well as the Japanese amendment of payment *at a rate suitable for the work executed, if there are no rates in force*.

The PRESIDENT states that the outcome before the subcommission was different for the second Spanish amendment⁴ adopting the deduction of the *cost of their maintenance*, which was rejected by 23 votes to 12. As no one wished to reopen the discussion he declares the amendment definitively discarded.

ARTICLE 13. *Japanese proposal*¹

The Japanese amendment relating to Article 13 bears, said he, on a more important question. Rapidly sketched, its object and scope are as follows: it is proposed to complete Article 13 by a new Article 13a thus couched: "*The ressortissants of a belligerent, inhabiting the territory of the opposing Party shall not be interned unless the exigencies of war make it necessary*." Under the form of an exception it was really a new proposal establishing the right to intern non-belligerent populations. This broadening of the rules laid down in 1899 aroused lively objections and the committee and subcommission voted it down by majorities.

¹ Annex 10.

² Annex 5.

³ Annexes 6 and 10.

⁴ Annex 6.

[10] The discussion was complicated by an Italian subsidiary proposal¹ to extend the provision proposed by Japan to *expulsion en masse*. Here was a question of a different kind; the right of expulsion has always been recognizable in States, and the existence of war cannot act to diminish it.

No vote was taken on these two proposals and the questions raised did not receive any solution in principle.

After these remarks, the **PRESIDENT** asks if any one desires to take up these two amendments.

His Excellency Mr. **Keiroku Tsudzuki** makes answer in the following terms:

I am not taking up the proposal again. I desire only to make it clear that I protest against some interpretations that have been given to our original proposal.

It has been said that it was a step backward. We do not admit this interpretation, as the words "unless the exigencies of war make it necessary," were inserted in a spirit of involuntary concession to imperious military exigencies, and as we were quite ready to support our proposal even without these words limiting the application of the liberal principle.

The **President** states that the remarks of his Excellency Mr. **KEIROKU TSUDZUKI** will be reported in the minutes. He states that the matter is understood in the sense of the ideas he has expressed.

ARTICLE 14. *Japanese and Cuban proposals*²

The Japanese and Cuban amendments relating to information bureaus for prisoners of war under Article 14 deal with the *individual returns* as well as *prisoners released on parole or exchanged or who have escaped*. Both were adopted unanimously by the subcommission and the Commission accepts them without discussion.

ARTICLE 17. *Japanese proposal*³

The **President** then recalls the fact that serious objections were raised to the text proposed by the delegation of Japan to replace Article 17, stating that "*the Government will grant, if necessary, to officers who are prisoners in its hands a suitable pay, the amount to be refunded by their Government.*" It is by reason of these objections and at the same time in order to harmonize the decisions of the Peace Conference with those of the Geneva Convention of 1906 that the committee proposed to the subcommission a new formula couched as follows: "*the Government will grant to officers who are prisoners in its hands the pay to which the officers of the same rank of its army are entitled, the amount to be refunded by their Government.*"

His Excellency Mr. **Keiroku Tsudzuki** declares that the delegation of Japan, which alone had voted against this text is happy to be able to withdraw its objections and that it supports it in accordance with instructions it has received from its Government.

After this was recorded, the **President** declared the text of the committee of examination definitively adopted.

¹ Annex 11.

² Annexes 10 and 5.

³ Annex 10.

[11] ARTICLES 22 and 44. *German proposal and Austro-Hungarian amendment.*¹ *Belgian and Netherland proposals*²

Before summing up the long discussions that took place both in the subcommission and the committee of examination on the German, Austro-Hungarian, Belgian and Netherland proposals relative to Articles 22 and 44, the PRESIDENT points out the importance of the questions raised on this subject. "Here we have," said he, "in substance the way in which they have been presented." The text of Article 44 at present in force is worded thus: "*it is forbidden to force the population of occupied territory to take part in military operations against its own country.*" This text is absolute and makes no distinction. However, in 1899 a question was touched on without being clearly solved; may a belligerent require the inhabitants of occupied territory to serve as guides for his troops or furnish them with information looking toward military operations? The question was put before the subcommission on the occasion of the German proposal already cited: "*It is forbidden to force the ressortissants of the adverse party to take part in operations of war directed against their own country even in case they have been enrolled in its service before the beginning of the war*"; a proposition having to have as a consequence the suppression of Article 44 at present in force which in itself has raised no objection. But the Austro-Hungarian delegation introduced an amendment of quite a different tenor which permitted the obliging of inhabitants of occupied territory to give their assistance in matters that do not relate to the fighting itself. To this amendment the Netherland delegation opposed another in the following words: "*It is forbidden to force the population of an occupied territory to give information concerning their own army or the means of defense of their country.*" This is to solve the question in a humanitarian sense and to respect the conscience of the inhabitants of occupied territories as is intended by the Convention of 1899.

Two discussions took place on this subject in the subcommission and in the committee. In order to arrive at an agreement the German proposal for 22a and the Netherland proposal for 44a were combined by the delegation of Belgium in a single text and the subcommission adopted it by a majority of 3 votes (18 against 15).

By reason of the smallness of this majority and with a view to reach a more complete accord, the committee abandoned this text and again took up the two separate amendments of the delegations of Germany and the Netherlands (Articles 22a and 44a), the place to be assigned them being left to be fixed later by the drafting committee.

It is in these circumstances that the question is reopened in its double aspect before the Commission. Must it be solved in the sense of the Austro-Hungarian delegation or in conformity with the diametrically opposite tendencies of the Netherland text? It is for the Commission to decide.

Major General Yermolow reads the following declaration:

Mr. PRESIDENT: With respect to Articles 22a and 44 the Russian delegation has the honor to declare that it cannot accept any amendment or any addition to Article 44 of the 1899 Regulations concerning the question of laws and customs of war on land.

¹ Annexes 2 and 3.

² Annexes 14 and 4.

Nevertheless, the delegation is disposed to accept the first proposal of the German delegation, that is to add to the above-mentioned Regulations a new Article 22a, under the condition, in that case, that Article 44 be wholly suppressed and any amendment thereof and addition thereto.

[12] Major General Baron Giesl von Gieslingen declares that he gives full support to the proposal originating with the delegation of Russia, which Major General YERMOLOW has just read.

The President remarks that this proposal is beside the question of the use of guides and of exacted information, without solving it either affirmatively or negatively.

Major General von Gündell declares in his turn that he has the same view as Major General YERMOLOW as to maintaining the original text of the German proposal.

His Excellency Lieutenant General Jonkheer den Beer Poortugael pronounces the following address:

GENTLEMEN: After two favorable votes, I would not have believed it necessary again to defend my proposal, which seems to me a very fair one; it provides that it should be forbidden to force the inhabitants of an occupied territory to give information about the hostile army, *i.e.*, hostile to the occupying army, therefore, about that of their compatriots, or about the means of defense of their country.

It does not appear to me fitting to repeat here the arguments that I have already had the honor to submit to you on this subject. It would, it seems to me, be unworthy of the high intelligence and generous sentiments of this select assembly.

But you will permit me, I hope, to remind you that General YERMOLOW himself has declared it would only be very exceptionally that recourse would be had to the extreme means of forcing the inhabitants to serve as guides and to give the desired information, and that Captain STURDZA said in our fourth meeting that what can be done in Belgium, in Switzerland, and in the Scandinavian kingdoms could not be done in other countries. As General AMOUREL has supported the same thesis as myself, we may add France to the countries where it would not be permitted to force the inhabitants to betray their country. According to my honorable colleague from France, as well as myself, there will happily never be any need to do so. If in the occupying army, the information and spy service is well regulated, it will find many cosmopolitans, individuals without heart and without country, Judases who would betray even the Messiah for a sequin. If this service is not well regulated, whose is the fault? Should the inhabitants who must remain apart from the struggle be forced to supply the lack of instruction and foresight of the invader?

If a State has not sufficient means to make war let it keep the peace or make peace. It is not for us to make war easy.

The best means the belligerent has to obtain his end in the minimum of time is to prevent the inhabitants of an occupied territory from going to join the armed forces of the adversary. To that end there is no more efficacious means than to pay in cash for everything that one takes and never to force the inhabitants to commit villainies. The armies of the Duke of WELLINGTON which acted in this way in the Spanish Peninsula did not want for anything, according to the report of Commissary PELLOT to Marshal SOULT.

You know, gentlemen, that *to force the inhabitants* means nothing but threatening them with death, and that the threat in a war is followed very closely by execution.

Now, I permit myself to draw your attention to the fact that in Section 4 of the project for an international convention presented in 1874 by the Russian Government it is stated:

The necessities of the war cannot justify: treason with regard to the enemy, declaring him outside the law, or authorization to employ violence and cruelty against him.

[13] To threaten with death one who does not wish to become a traitor is at the same time violence and cruelty. Let us not forget that Section 20 contains the following provision: "Any inhabitant of the territory occupied by the enemy who communicates information to the hostile party is likewise given up to justice."

I have also the honor to call to your attention the proclamation which the King of Prussia, afterwards the Emperor of Germany, addressed to the French people at Saarbrücken August 11, 1870.

The King of Prussia said: "Military events have led me to cross the frontiers of France. I am making war on the soldiers, not on the citizens of France. They will, therefore, enjoy entire security in their persons and in their property, so long as they do not deprive me of the right of giving them my protection by hostile acts against the German troops."

This is quite different, gentlemen, from threatening with death peaceable inhabitants who have done no wrong and forcing them to treason.

War is made by State upon State and not upon individuals, private persons, inhabitants of the country. This is the fundamental principle of the law of war that we find repeatedly throughout the minutes of our Conferences.

What should we think of all that? Shall they be but phrases, but empty words?

No, gentlemen, we wish to be true; far from wishing to make dupes, we are unwilling to come with the palm branch in one hand and a sword in the other. If it is true that war is made by State upon State, let us not force inhabitants to mingle in the struggle; above all let us not force them to commit villanies. (*Loud applause.*)

General **Amourel** says that it would be impossible to add to the forceful argument of the military Dean of the Assembly without risking an anti-climax. He announces that the French delegation entirely supports the thesis so eloquently maintained by his Excellency General **DEN BEER POORTUGAEL**.

Colonel **Sapountzakis** makes a like declaration.

His Excellency Mr. **Carlin** announces that the delegation of Switzerland will also vote for the Netherland proposal in conformity with the attitude that the delegation has taken in the subcommission and in the committee.

Colonel **Ting** declares that the delegation of China, although disposed to maintain Article 44 of the Convention of 1899, accepts the Netherland amendment.

Colonel **Jofre Montojo** expresses himself in the name of the delegation of Spain in the sense of the Netherland proposal.

The discussion having come to an end, the **President** puts to vote the propo-

sition accepted by the subcommission, pointing out that the delegations having a contrary opinion should vote no.

Thirty-three delegations took part in the vote.

The following voted yes: Belgium, Brazil, China, Cuba, Denmark, Dominican Republic, France, Greece, Haiti, Italy, Luxemburg, Mexico, Norway, Panama, Paraguay, Netherlands, Persia, Serbia, Siam, Sweden, Switzerland, Spain, Turkey.

The following voted no: Austria-Hungary, Bulgaria, Germany, Great Britain, Montenegro, Portugal, Roumania, Russia, United States of America.

Japan abstained.

[14] In consequence the solution adopted by the Committee is reproduced in the report of Major General Baron GIESL VON GIESLINGEN¹ and is declared admitted by the Commission by 23 votes against 9 and 1 abstention.

ARTICLE 23. *German proposal*²

The German amendment relating to Article 23 was accepted without discussion.

ARTICLE 27. *Greek proposal*

Unanimous approval was also given to a suggestion of the delegation of Greece to include *historic monuments* in the list which, by the terms of Article 27, should be spared so far as possible by bombardment.

ARTICLES 35 AND 45. *Netherland proposal*³

The Netherland amendment relating to Articles 35 and 45 were withdrawn by the Netherland delegation with the consent of the committee.

ARTICLE 46. *Austro-Hungarian proposal*⁴

The Austro-Hungarian delegation declares that it does not resume its amendment relating to Article 46, which consisted in placing the words *in principle* at the beginning of the clause relating to respect for private rights.

ARTICLE 52. *Russian proposal*⁵

The President invites the Commission to express itself on the Russian amendment relating to Article 52. The text accepted by the committee is worded as follows:

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, and payment shall be arranged as soon as possible, before the end of hostilities in so far as the military authority of the belligerent shall have at his disposal the necessary funds.

Major General von Gündell thinks that the text should end with the words "*as soon as possible*."

¹ Adoption of the German and Netherland proposals in the form of two distinct Articles, 22 a and 44 a.

² Annex 2

³ Annexes 9 and 4.

⁴ Annex 7.

⁵ Annex 15.

The **President** replies that these last remarks will be brought to the attention of the drafting committee which is to decide the final wording.

ARTICLE 53. *Danish and Austro-Hungarian proposals, Russian amendment*¹

The subcommission next adopted the formula proposed by the committee respecting seizure of means of transportation and communication, worded as follows:

All means of communication and of transport operated on land, at sea, and in the air for the transmission of persons, things, and news, as well as depots of arms and, generally, all kinds of munitions, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

[15] The **President** recalls on the subject of this article a remark of the first delegate of Switzerland asking if these provisions can be applied to the property of neutral persons in the territory of the belligerents. He adds that the committee considered this question as falling within the program of the second subcommission.

The amendment of the delegation of Denmark is thus worded:

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

Mr. **Louis Renault** observes that this amendment has reference only to what takes place on land, without touching the question of seizure or destruction of submarine cables in the open sea.

The **President** thanks him for having given the text an interpretation that leaves no room for doubt.

**INDEMNIFICATION FOR VIOLATION OF THE REGULATIONS OF
THE HAGUE CONCERNING THE LAWS AND
CUSTOMS OF WAR ON LAND**

After the **President** read a new German proposal² relating to the penalty for violations of the Regulations of 1899, which the subcommission approves, but which it believed it could not accept as drafted, Major General VON GÜNDELL declares that he accepts the wording decided on by the committee, which combines the two articles into a single one without establishing any difference in principle between neutral persons and others. This wording is as follows:

A belligerent party which shall violate the provisions of the present Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

In the name of the British delegation, Major General Sir **Edmond R. Elles** makes reservations on this subject.

¹ Annexes 12, 7 and 8.

² Annex 13.

The **President** proposes to leave it to the drafting committee to fix the place for the new article if the Conference decides that it ought to be adopted.

The **PRESIDENT** lays before the Commission for its discussion the renewal of the Declaration of 1899 relating to the prohibition of launching projectiles and explosives from balloons, as brought up by the delegation of Belgium.¹

His Excellency Mr. **Tcharykow** reads the following declaration:

The proposal that the delegation of Russia had the honor to make to the last meeting of the first subcommission of this Commission and the second part of the proposal presented at the same time by the delegation of Italy, were inspired by the same thought: to add to Article 25 of the Regulations of 1899 concerning the laws and customs of war on land a provision that would assure for all time to undefended towns, villages, dwellings and buildings immunity from attack or bombardment even by means of balloons or other new analogous means.

[16] Considering that these two proposals look to the same end, that they are in entire agreement and complementary to each other, the delegations of Russia and Italy have in common drawn up a text of the said article to be submitted to this Commission, as follows:

ARTICLE 25

It is forbidden to attack or bombard, with artillery, or by throwing projectiles and explosives from balloons, or by other new methods of a similar nature, towns, villages, dwellings or buildings which are not defended, and not to observe, when throwing the above-mentioned projectiles or explosives, the accepted restrictions for bombardments in land and sea warfare, so far as those restrictions are compatible with this new method of fighting.

We like to hope, gentlemen, that in this unified form the two propositions, which had already in the last meeting of the subcommission won almost unanimity of votes, will to-day be able to deserve your complete approval.

The **President** reminds the Commission that the renewal of the Declaration of 1899 relating to balloons was adopted by 29 votes (two being conditional under reservation of unanimity) against 6. This Convention has a duration of only five years while the Russian proposal is definitive; as such it should find its place in the code of laws and customs of war on land.

His Excellency Count **Tornielli** declares that he supports the Russian proposal.

Major General **Amourel** then remarks that the French delegation is completely in accord with those of Russia and Italy as respects such prohibition. But he must add that this is already contained in Article 25 which prohibits bombardment of undefended towns, villages, etc., by projectiles thrown in any way whatever, both from balloons and from batteries of artillery. In these circumstances he must ask whether the enumeration proposed by the delegation of Russia will strengthen the principle in view to spare as far as possible the places and buildings in question. On the contrary he thinks it would be preferable to make the present text of Article 25 more precise by inserting the words: "*by any means whatever*," after the words: "*It is forbidden to attack or bombard*."

¹ Annex 18.

Such an addition would certainly offer better guaranties both for the present and the future.

After an exchange of views between the **President** and his Excellency Mr. **Tcharykow** on the subject of the French proposal, which consists in keeping Article 25 with the addition of the words "*by any means whatever*," his Excellency Mr. **Tornielli** declares that he accepts it.

His Excellency Mr. **Tcharykow**, Major General **von Gündell** and Colonel **Sapountzakis** also indicate their support.

The **President** says that the Commission is unanimous in adopting the proposal thus amended.¹

The Belgian proposal relating to the Declaration of 1899 is likewise adopted by the Commission, no request that it be put to vote being made. [17] Brigadier General **Davis** asks to speak on the minutes of the meeting of August 7 which contained the following passage:²

The President recalls that the Convention of 1899 was completed by two other Declarations, one relating to "prohibition of bullets which expand in the human body" and the other "dealing with prohibition of the use of asphyxiating projectiles," and that nobody asked for the revision of these two declarations.

He adds that the same *procès-verbal* mentions that "the modification or abrogation of this Declaration does not appear in the program and that the restrictive proposal of the United States³ is not connected therewith." However, the delegation of the United States recalls that on July 8 it filed a proposal thus worded:

The use of bullets that inflict unnecessarily cruel wounds, such as explosive bullets and, in general, every kind of bullet that exceeds the limit necessary for placing a man immediately *hors de combat* should be forbidden.

On July 10 this proposal was printed and distributed in the usual manner.

In these circumstances the delegation of the United States finds it difficult to understand "that nobody asked for the revision of these two declarations." His wish in submitting his proposal on July 8 was to secure consideration of the proposal thus formulated and submitted to the Commission.

In the *procès-verbal* of July 31 an interpretation was given to the program that the delegation of the United States, to its great regret, cannot share, that is to say, that the declarations of the conventions of 1899 can be modified only at the suggestion of a Power which denounces them. The Government of the United States is not one of the signatories of the third Declaration, and consequently is not in a position to denounce it in the manner and form prescribed in the Convention.

The present situation is as follows: A proposal to modify the rules of war on land has been submitted by this delegation but has not received consideration in this subcommission. On July 8, when the proposal was filed, this delegation had no means of knowing that it could not be taken into consideration as being a modification of Declaration No. 3.

As a final word on this point, I especially address those gentlemen among

¹ Annex 16.

² *Post*, p. 153 [159].

³ Annex 17.

the delegates who are officers in the armies of the nations represented here. You are familiar with the whistle of bullets, you are accustomed to the sight of dead and wounded. We have regulated the operations of war, we have improved the situation of neutral individuals; these are acts of high justice, but we must not forget the combatant officers and the private soldiers who bear the burdens of war. I trust that this Conference, convoked in the name of humanity, will not forget the fate of those who suffer the real losses and difficulties of the battle-field.

The duty of the delegation of the United States has been fulfilled; the duty of the Conference begins where that of the delegation ends.

The **PRESIDENT** takes note of the remarks of the delegate of the United States which will appear in the *procès-verbal*, and he remarks that the question raised by General DAVIS was put to the Commission and that no one opposed the solution there given to it. The question can therefore no longer be discussed, but the **PRESIDENT** thinks too that it has been decided correctly. The program

outlined for the Conference by the Russian Government more than a year [18] ago mentioned the revision of the Regulations of war and renewal of the

Declaration relating to balloons, but no proposal was made as to the two other Declarations which no Power has denounced, and which preserve their full obligatory force for one year at least. The United States did not even refer their proposal to them.

The **PRESIDENT** then observes that the text proposed is identical with that which Captain CROZIER first offered in 1899 and which was unanimously rejected as insufficient. Mr. CROZIER himself then signed the Declaration in its present form.

The **PRESIDENT** declares the discussion closed and adjourns the meeting after having thanked the Commission for the active and enlightened assistance that it brought to the study of the questions submitted to it.

The meeting adjourns at 12:40 o'clock.

[19]

Annex

AMENDMENTS TO THE REGULATIONS OF 1899 RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

RENEWAL OF THE DECLARATION OF JULY 29, 1899, PROHIBITING THE LAUNCHING OF PROJECTILES AND EXPLOSIVES FROM BALLOONS

REPORT TO THE COMMISSION ¹

The program of the first subcommission comprised two questions:

1. *The examination of the amendments proposed by the several delegations to the Regulations of 1899 respecting the laws and customs of war on land;*

¹ Reporter, Major General Baron GIESL VON GIESLINGEN. See also the report to the first subcommission (annex to the third meeting of this subcommission) and the report to the Conference, vol. i, p. 93 [96].

2. *The renewal of the Declaration of 1899 to prohibit the launching of projectiles from balloons.*

1. The first four meetings were devoted to the Regulations of 1899.

As was said by the president in his opening address, "In its entirety the work of 1899 is satisfying. . . . It constitutes a body of rules which the high contracting parties engage themselves to impose upon their troops and which thus forms a powerful conventional obligation."

Thanks to the harmony which has reigned in our assembly, there resulted an almost unanimous agreement, and, since the first session of the Second Conference, the adhesion of Switzerland and of China has made it almost complete.

The amendments which have just been proposed arise, not from the need of recasting the Regulations of 1899, but from that of improving them by the addition of some matters of detail. They have been retouched, but not altered in any essential particular.

It may be remarked that it was only at the last moment that amendments for this purpose were forthcoming. The order of the day of the first meeting contained none. But, during the course of the meeting, some were filed by the delegations of the Netherlands, Germany, Austria-Hungary, Russia and Spain; and these were followed by many others, emanating from the delegations of Japan, Italy, Cuba, Denmark and Belgium.¹

These amendments had reference to Articles 1, 2, 4, 5, 6, 13, 14, 17, 22, 23, 27, 35, 45, 46, 52, 53 and 57. Those, however, which related to Article 57, on the treatment of interned belligerents and the care of wounded in neutral [20] countries, were referred to the second subcommission, which was charged with the study of all questions concerning neutrality, and its program already included the proposal to add to the Regulations in force a new section on the treatment of neutral persons in belligerent territory.

It seemed to the first subcommission that the questions bearing directly on neutral persons, or concerning the rights and duties of neutral States, should not appear in Regulations governing the relations of belligerents with each other or with the inhabitants of invaded or occupied territory, as such regulations are intended to be communicated to troops in the shape of instructions in time of war.

ARTICLE 1. *German amendment*²

The amendment proposed by the German delegation to Article 1 respecting the laws, rights and duties of war, as regards the militia and the volunteer corps, tended to exact a previous notification from the opposing party of the "*fixed distinctive emblem recognizable at a distance*" which they are obliged to carry.

It was evident from the discussion that the proposed addition would be considered as an aggravation of the present régime, by reason of the new duties imposed upon the belligerents by this rule. It was remarked that the Powers do not notify one another of the model of the uniform adopted for their troops and that the real distinctive mark of the combatants consists in the open carrying of arms.

The amendment was rejected by 23 votes against 11.

¹ Annexes 2-15.

² Annex 2.

ARTICLE 2. *German amendment*¹

This amendment related to risings in mass. It required that, to be regarded as belligerents, the population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, must respect the laws and customs of war as stipulated in the old text, and also *carry arms openly*.

It seemed to the subcommission that this amendment had no other effect than to make the original text more definite without modifying its meaning to the prejudice of the population concerned.

The amendment was carried by 30 votes to 3, with 2 delegations, those of Switzerland and Montenegro, not voting.

The first of these delegations explained its abstention by the fear that the public opinion of its country would only see in the new text an aggravation of the critical conditions existing at present.

ARTICLE 4. *Japanese amendment*²

This amendment, like the following, concerns Chapter II relative to prisoners of war. It tended to add to objects such as arms, horses and military papers which, although their own personal property, cannot be left in their possession, *all other objects appropriate for military use*.

It cited particularly maps, bicycles, optical instruments, etc.

The amendment was rejected by 29 votes against 6.

[21]

ARTICLE 5. *Cuban amendment*³

The Cuban delegation proposed that the conditions required by Article 5 for the internment of prisoners of war be completed by a clause stipulating that they can be confined "*only while the circumstances which necessitate the measure continue to exist.*"

This addition was adopted by a very large majority.

ARTICLE 6. *Spanish and Japanese amendments*⁴

The Spanish delegation proposed in the first place to modify the first paragraph so as to exempt officers who are prisoners of war from being compelled to work. A German additional amendment, which was accepted by the Spanish delegation, provides, in favor of non-commissioned officers, that prisoners of war can only be employed as laborers *according to their rank* as well as according to their aptitude.

These changes were adopted without opposition, as well as an amendment proposed by Japan which provided that "*If there are no rates in force,*" the work for the State must be paid for "*at a rate suitable for the work executed.*"

A second amendment presented by the Spanish delegation had for its object the omission in the last paragraph of the article of the clause relative to the

¹ Annex 2² Annex 10.³ Annex 5.⁴ Annexes 6 and 10.

defalcation of the expenses of their maintenance. It was rejected by 23 votes against 12.

ARTICLE 13a. *Japanese proposition*¹

The Japanese delegation proposed to insert after Article 13 a new Article 13a as follows:

The *ressortissants* of a belligerent, inhabiting the territory of the opposing party shall not be interned unless the exigencies of war make it necessary.

An Italian amendment,² approved by the delegation of Japan, proposed to extend this provision to expulsions in mass.

Two important objections were made to these provisions: the first had reference to the very basis of the Japanese text, since it would follow, *a contrario*, that a non-belligerent population could be interned in mass, without previous trial and without allegation of grievances, under the pretext of the exigencies of war; the second had reference to the Italian addition from which could be deduced the lessening in time of war of the right which each State possesses at all times to expel aliens from its territory.

The committee of examination to which the Japanese proposition had been sent was almost unanimously in favor of rejecting it because of the great disadvantage which would be presented by a text which might seem to aggravate the rules sanctioned in 1899.

The Japanese delegation nevertheless maintained its amendment before the subcommission, and in consequence a new discussion took place.

It was remarked that according to the principles which served as a basis for the Convention of 1899, war is limited to the belligerents and the civil population should not suffer either in its honor or its family rights, in private property, religious convictions or the exercise of worship. Under the appearance, it was said, of a restriction to the rights of belligerents, the Japanese proposition opens these principles to question. To intern an inoffensive inhabitant is to deprive him of his liberty and to strike his interests. Article 5 of the Regulations [22] only provides internment for prisoners and Article 43 assures to the civil population the maintenance of order and of public life by respect for the laws in force, which implies an interdiction of arbitrary measures.

The Italian delegation, whose amendment was only subsidiary, insisted that expulsion in mass be forbidden in a case where internment in mass was the consequence of military exigencies; and his Excellency Mr. BEERNAERT, who was supported by General AMOUREL, maintained that the right of expulsion belonging to each particular State; in time of war as well as in time of peace, is for the local legislation to regulate and not for a world conference.

No theoretical solution could be given to these questions; nevertheless the Japanese amendment and the Italian subamendment were withdrawn with the understanding that the discussion to which they gave rise should be entered in the minutes.

Reservations were also made on the subject by the delegation of Sweden in the minutes of the following meeting.

¹ Annex 10.

² Annex 11.

ARTICLE 14. *Japanese and Cuban amendments*¹

Article 14 relative to the information bureau for prisoners of war was the subject of two amendments filed by the delegations of Japan and Cuba, which were both adopted by the subcommission unanimously without discussion.

The first inserts after the second sentence of the first paragraph the following words:

The individual return shall be sent to the Government of the other belligerent after the conclusion of peace; the bureau must state in it the regimental number, name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.

The second relates to prisoners released on parole, exchanged or escaped, and is inserted in the final clauses of the first and second paragraphs, which are thus made to read as follows:

It is kept informed of internments and transfers, as well as of releases on parole, exchanges, escapes, admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have *been released on parole, or exchanged, or who have escaped* or died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 17. *Japanese amendment*²

The amendment proposed by the Japanese delegation was intended to replace Article 17 with the following text:

The Government will grant, if necessary, to officers who are prisoners in its hands, a suitable pay, the amount to be refunded by their Government.

This change was due to a desire to avoid the different interpretations which could be given to the text in force, and to the necessity of making more precise the definition of the term "*full pay*" in that text.

The new wording, however, could permit a Government either to give nothing or to grant excessive pay; and it was therefore sent to the committee [23] The committee, after acquainting themselves with the interpretations that the domestic regulations of different countries give to the phrase "*full pay*," found it indispensable to omit the words "*if necessary*" in order to make the article obligatory.

It was also deemed necessary, for the sake of consistency, to take into account the corresponding article of the Geneva Convention of 1906, dealing with the salaries of the medical personnel when prisoners (Chapter III, Article 13), which secures to them the same pay and allowances from the captor as the latter gives to persons of the same grade in his own army.

In consequence, the committee proposed to the subcommission the following formula:

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its army are entitled, the amount to be refunded by their Government.

¹ Annexes 10 and 5

² Annex 10.

The Japanese delegation has not concurred in this text, but the subcommission adopted it unanimously with the exception of one vote.

ARTICLES 22 and 44. *The German proposition. The Austro-Hungarian, Netherlands and Belgian amendments*¹

The amendment offered by the German delegation, especially on account of the Austro-Hungarian amendment attached to it, gave rise to lengthy discussions in the subcommission and in the committee.

The German delegation proposed to insert in Chapter I of Section II of the Regulations, between the 22d and 23d articles, a new article worded thus:

NEW ARTICLE 22a

It is forbidden to compel *ressortissants* of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

The amendment asked by the delegation of Austria-Hungary consists in inserting after "*to take part*" the words "*as combatants*."

The new German proposal was a development of the principle accepted in 1899, as regards the forced participation of the population of occupied territory in military operations against their country, by extending to all *ressortissants* the prohibition of which the Regulations did not give this population the benefit. It extended it even to foreign subjects who might have been in the service of the hostile party before the commencement of the war.

It is on account of the general application of this article that the German delegation believed it incumbent upon it to propose its insertion in Section II of the Regulations, relating to the means of injuring the enemy, and the omission of the present Article 44 in Section III under the heading of "Military authority over the territory of the hostile State."

The committee of examination, to which the amendment was sent after a debate in the subcommission, accepted the German text without objection, saving a slight correction of form at the end of the article, replacing "*if they were enrolled in its service*" by the wording "*if they were in its service. . . .*"

[24] The question of the place to be given to this new article was reserved for the drafting committee as being more especially within its competence.

The German proposition had an extensive character; the Austro-Hungarian amendment had quite a different meaning; it permitted the compulsion of the population to render every assistance except actual fighting. Its aim was the employment of forced guides and the obligation of furnishing military information to the enemy. The delegation of Austria-Hungary, which had taken the initiative in this addition, desired to draw a clear distinction between "*operations of war*," properly so called, in which the population of the hostile State cannot be compelled to take part, and certain "*military services*" which, according to it, in certain cases, a belligerent should be free to impose on the inhabitants.

It is on this subject that differences arose and led to lengthy debates both in the subcommission and in the committee.

The Austro-Hungarian point of view was not shared by the majority. The

¹ Annexes 2, 3, 4 and 14.

committee reported, on the contrary, a vote favoring in principle a Netherland amendment of an opposite tendency on the same subject. This amendment was worded thus:

ARTICLE 44a

It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defense of their country.

These two amendments came again before the subcommission simultaneously and general discussion was renewed.

It entered a new phase following a proposal of the delegation of Russia suggesting acceptance of the German text of Article 22a, without the Austro-Hungarian addition, and placing it to itself in a new chapter under Section II. This proposal was made on condition that the old text of Article 44 be preserved, instead of being suppressed as the German delegation had proposed, or replaced by the new Article 44a as proposed by the Netherland delegation. This proposition was consented to by the German and Austro-Hungarian delegations. On the other hand, another attempt at agreement combined the German proposal 22a and the Netherland proposal 44a in a single text as follows:

Replace Article 44 (whatever the place to which it may be assigned) and Article 44a proposed by the Netherland delegation by the following text:

It is forbidden to force the inhabitants of occupied territory to take part personally either directly or indirectly, collectively or individually, in military operations against their country and to demand of them information in view of such operations.

After a long discussion, this rendition, which was proposed by the Belgian delegation, was adopted by the subcommission by a majority of 3 votes (18 against 15).

This small majority and a desire to reach a more complete agreement led the bureau to refer the question to the committee a second time. After a new examination, the question was raised whether it would not be best to testify to the almost unanimous agreement that had been reached on the German proposal by withdrawing the Belgian amendment that combined it with the Netherland amendment. As the delegation of Belgium did not object to this, the committee found two alternatives before it; on the one hand, the adoption pure and simple of

Article 22a, with or without addition and suppression of the Article 44 now [25] in force; on the other, the adoption of the German and Netherland amendments as two distinct articles—22a and 44a.

The latter solution has appeared the better, with two changes in wording, to wit: "against their country" in place of "against their *own* country," in Article 22a, and "*the inhabitants*" in place of "*the population*" in Article 44a, which would then read: "*It is forbidden to force the inhabitants of occupied territory to furnish information about the hostile army or its means of defense.*"

As to the place for these two articles in the Regulations, the committee thought that Article 22a might be placed in Article 23 as a last paragraph; but that it was for the drafting committee to decide that point.

Before closing the discussion relative to these two articles the President recalled that the divergent opinions might be expressed again in the plenary session of the Commission at the time of the definitive vote.

ARTICLE 23. *German amendment.*¹

The German delegation has proposed to add to Article 23, as now in force, a new paragraph thus worded:

(It is especially forbidden) "*to declare abolished, suspended, or inadmissible the private claims of the ressortissants of the hostile party.*"

This addition was considered as defining in very felicitous terms one of the consequences of the principles admitted in 1899. It was approved unanimously, with a slight change in the text by inserting the words "*in a court of law*" after the word "*inadmissible.*" The subcommission did not admit a subsidiary Russian proposition permitting in certain cases, during war, the seizure of credits or documents belonging to the enemy which might enable him to continue hostilities.

ARTICLE 27. *Greek amendment.*

In order to bring the recommendations of the Second Commission into harmony with those of the Third Commission relating to naval bombardments, the delegation of Greece took the initiative in proposing the inclusion in Article 27 of "*historic monuments*" in the list of buildings that should be spared as far as possible in case of bombardment.

This amendment was carried unanimously.

ARTICLE 35. *Netherland amendment*²

The delegation of the Netherlands had proposed to add to Article 35 a new paragraph worded as follows:

The capitulation to the enemy of an armed force is not obligatory for the detachments of that armed force which are separated from it by such a distance that they have preserved a liberty of action sufficient to continue the struggle independently of the main body.

This amendment was withdrawn in the first meeting of the committee. It was recognized that this was for each State and in each case a question of internal regulation.

[26]

ARTICLE 45a. *Netherland amendment*³

There was withdrawn also after discussion, as superfluous, another Netherland amendment to follow Article 45 by a new article worded as follows:

It is forbidden to punish an inhabitant of an occupied territory by death without a sentence of a war council.

This sentence must be sanctioned before it is executed by the commander in chief of the army.

The committee believes that this new text might be considered as restrictive of the principles admitted in 1899, according to which the lives of the inhabitants must always be respected, and non-belligerents are guaranteed against all abuse by other more extensive provisions.

¹ Annex 2.

² Annex 9.

³ Annex 4

ARTICLE 46. *Austro-Hungarian amendment*¹

The committee considered also as possibly reacting against the rules established in 1899 the amendment relative to Article 45 proposed by the delegation of Austria-Hungary. Its intent was to precede the clause relative to the respect for private property by the words "*in principle*."

This addition did not tend in any way, in the opinion of its authors, to invalidate the intent of the present text, but simply to place its construction in harmony with the restrictions contained in other articles and notably in Article 53.

The proposition was nevertheless withdrawn.

ARTICLE 52. *Russian amendment*²

During the fourth meeting of the subcommission, his Excellency Mr. TCHARYKOW proposed to complete Article 52 by a provision that commanders of military forces, when in occupied territory, should be authorized to provide, as soon as possible during the continuance of hostilities, for the redemption of receipts given for contributions in kind called for by the needs of the army of occupation.

This new proposal was sent to the committee, where it was recognized as being within the spirit of Article 52. After a short discussion with a view to avoid the term "redemption," agreement was reached on the following text to become the last paragraph of Article 52:

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, *and payment shall be arranged as soon as possible*.

ARTICLE 53. *Austro-Hungarian amendment and Russian subamendment*³

The delegation of Austria-Hungary proposed to complete the provisions of Article 53 relative to the seizure of means of transportation and communication by adding the words "*on land, at sea, and in the air*."

The wording proposed was as follows:

Railway plant, telegraphs, steamships and other vessels, vehicles of all [27] kinds, in a word, all means of communication operated on land, at sea and in the air for the transmission of persons, things, and news, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

The delegation of Russia asked, besides, to add to the enumeration in this text the words "*as well as teams, saddle animals, draft and pack animals*" after the words "*vehicles of all kinds*." This addition was suggested as being analogous with Articles 14 and 17 of the new Geneva Convention of 1906, which mentions teams at the same time as vehicles.

The delegation of Austria-Hungary accepted this amendment.

While fully appreciating the need of defining as precisely as possible the scope of the text, the committee thought that such a nomenclature might cause

¹ Annex 7.

² Annex 15.

³ Annexes 7 and 8

inconvenience, as any enumeration is unsafe because incomplete. It was believed preferable to adopt a general formula not lending itself to any ambiguity, and thus worded: "*All means of communication and of transport.*" The military delegate of Russia himself agreed with this way of looking at the matter, on condition that the text as proposed could not have a restricted meaning, and it was approved unanimously. The second paragraph of Article 53 would commence then with the words: *All means of communication and of transport operated on land, at sea and in the air, etc.*

At this point the military delegate of Japan referred to the reservations which had been stated by his delegation in the subcommission concerning the addition of the words "at sea," as such a provision appeared to him to trench upon the program of the Fourth Commission. However, the committee considered it advisable to retain them, as the right of maritime capture is applicable in land warfare in the case of ships seized in a port by a body of troops, especially as regards those destined for river navigation.

The amendment relating to Article 53 led the senior delegate of Switzerland to inquire whether its provisions can be taken to apply to the property of neutral persons domiciled in belligerent territory.

The committee was of the opinion that this question was included in the program of the second subcommission; it was already occupied with a German proposal regarding the treatment of neutral persons,¹ and the first subcommission had sent to it all the matters relative to neutrals comprised in the fourth section of the Regulations (Articles 57 to 60), as not being properly placed in instructions intended for troops.

ARTICLE 53. *Danish amendment*²

A second amendment relating to the same article, and moved by the delegation of Denmark, proposed to insert at the end of the 1899 text the following provisions:

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

When this amendment first came up for discussion, the delegation of Great Britain asked for an adjournment of its discussion, but at a later session disclaimed having any objection to its adoption. It was then carried without any opposition.

[28] To the amendments proposed to the Regulations of 1899, within the scope of the program of the first subcommission, there was added a new proposition by the German delegation:³

INDEMNIFICATION FOR VIOLATION OF THE HAGUE REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

ARTICLE 1

A belligerent party which shall violate the provisions of these Regulations to the prejudice of neutral persons shall be liable to indemnify those

¹ Annex 36.

² Annex 12.

³ Annex 13.

persons for the wrong done them. It shall be responsible for all acts committed by persons forming part of its armed forces. The estimation of the damage caused and the indemnity to be paid, unless immediate indemnification in cash has been provided, may be postponed, if the belligerent party considers that such estimate is incompatible, for the time being, with military operations.

ARTICLE 2

In case of violation to the prejudice of the hostile party, the question of indemnity will be settled at the conclusion of peace.

This interesting proposition was calculated to give a sanction to the requirements laid down by the First Peace Conference, which it is the duty of the second commission to complete and make precise. As the provisions of the Regulations respecting the laws and customs of war must be observed not only by the commanders of belligerent armies, but, in general, by all officers, commissioned and non-commissioned, and soldiers, the German delegation thought it well to propose that the Convention should extend to the law of nations, in all cases of infraction of the Regulations, the principle of private law according to which the master is responsible for his subordinates or agents.

The principle of the German proposition did not meet with objection. But a discussion occurred on the subject of the distinction it made between the populations of belligerent States and those of neutral States. In both cases, it was said, there is a violation of rights and, at least as a rule, the reparation should be the same. Now, with respect to the former, the text proposed limits itself to saying that the "*questions*" concerning them must be settled when peace is arranged; therefore, no right is recognized in them.

The military delegate of Germany declared that he by no means intended to make any difference in legal right between "neutral persons" and "persons of the hostile party," the text proposed having no other purpose than to regulate the method of paying the indemnities. There had therefore been a misunderstanding.

The committee came to the conclusion that it was best to retain only the first part of the proposition and to give it the following form:

A belligerent party which shall violate the provisions of the present Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.¹

The commission will enact in this regard in plenary session, and the new wording decided upon will be revised by the General Drafting Committee.

Before the closing of the discussion relative to the regulations of the laws and customs of war, his Excellency Lieutenant General Jonkheer DEN [29] BEER POORTUGAEL begged to remark that the Netherland delegation had had the intention of proposing an addition to Article 5 to the effect that prisoners of war cannot be put to death:

1. Except in case of resistance or attempt to escape.
2. Except after a sentence for crimes or acts punishable by death in virtue of the civil or military laws of the country that has made them prisoners.

This amendment was abandoned because the prohibition which it had in view

¹ Annex 16.

was already contained in Article 4, the second paragraph of which required that "*prisoners of war must be humanely treated.*"

The last meeting of the first subcommission was devoted to the second question contained on its program.

DECLARATION OF 1899. RENEWAL OF THE DECLARATION ON
THE PROHIBITION AGAINST LAUNCHING PROJECTILES
AND EXPLOSIVES FROM BALLOONS

This declaration, which was made only for a period of five years, having expired, the delegation of Belgium, which undertook to move its readoption¹ stated it in the same terms as in 1899:

The contracting Powers agree, for a term of five years, to forbid the throwing of projectiles and explosives from balloons or by other new methods of similar nature.

The present Declaration is only binding on the contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

Non-signatory Powers may adhere to the present Declaration.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

Besides, the subcommission had before it two subsidiary amendments proposed by the delegations of Russia and Italy in case the main proposition should not be adopted.

The Russian amendment was to replace the general and temporary prohibition formulated in the above text by a certain number of permanent restrictions, prohibiting the throwing of projectiles or explosives from balloons against undefended towns, villages, houses or buildings. That prohibition, as it relates to means of injuring the enemy, would properly be inserted where these matters are dealt with in the first chapter of the second section of the Regulations of 1899, and it would suffice to complete Article 25 by wording it as follows:

[30] It is forbidden to attack or bombard, by artillery or by throwing projectiles or explosives from balloons or by the aid of other new methods of a similar nature, towns, villages, dwellings or buildings that are not defended and do not contain establishments or depots that can be utilized by the enemy for purposes of the war.

The amendment proposed by the Italian delegation was to the same effect as the Russian, and its provisions were intended to be permanent, whereas the main proposition carried a time limit of five years. It further required that a

¹ Annex 18.

balloon, if employed in operations of war, must be *dirigible* and *manned by a military crew*. It was thus worded:

1

It is forbidden to throw projectiles and explosives from balloons that are not dirigible and manned by a military crew.

2

Bombardment by military balloons is subject to the same restrictions accepted for land and sea warfare, in so far as this is compatible with the new method of fighting.

The discussion first centered on the text proposed by the delegation of Belgium. The delegations of Austria-Hungary, China, Great Britain, Greece, Portugal and Turkey declared themselves in favor of it, while the French delegation felt obliged to withhold its support.

This delegation said that in its opinion the humanitarian provisions advocated by the Belgian delegation were already contained in Articles 25 and 27 of the Regulations of 1899 on the laws and customs of war on land, which forbid "*to attack or bombard towns, villages, dwellings or buildings that are not defended*" and require that in sieges and bombardments all necessary steps must be taken to spare as far as possible the localities and edifices that it is particularly desired to protect. It is because of the essential idea that it is necessary above all to assure their protection, without having any question as to the mode of discharging projectiles enter into the matter, that the French delegation thought it could not support a renewal of the Declaration of 1899.

The Belgian proposal was carried by 29 votes, 2 of these being conditional on unanimity, to 6; 10 countries not being represented.

On the request of the delegation of Italy, its subsidiary amendment, which was supported by the Russian delegation, was also put to vote under reserve of the vote already taken. On account of the distinct character of its two articles, the German delegation asked that they be separated, observing, as regards the first, that it was possible to throw projectiles from non-dirigible balloons, and further, that there was no connection between the power to direct balloons and that of throwing projectiles from them.

The first article of the Italian amendment was carried by 21 votes to 8, with 6 abstentions.

After this vote, a remark was made with a view to establish that it was not to be taken as filling a gap in the old Article 25, as the prohibitions already contained in that article apply generally to throwing projectiles in any manner whatever against undefended towns, villages, etc.

After an exchange of views on this subject, it was recognized that the second provision related to Article 25 and that it should be inserted there, while the main declaration should be preserved in the form in which it was voted.

[31] Article 2 of the Italian amendment was then put to vote and carried by 31 votes to 1, with 3 not voting.

The Convention of 1899 and the Regulations with respect to the laws and customs of war on land were also supplemented by two other Declarations—one prohibiting "*the use of bullets which expand or flatten easily in the human body,*" and the other "*the use of projectiles that have for their sole object the diffusion of asphyxiating or deleterious gases.*"

As no State had asked for a revision of these two Declarations, the subcommission was of the opinion that any discussion thereof would be out of order. They had been concluded for an indefinite term, and can be denounced only by giving one year's notice in advance. No Power has expressed such an intention. Moreover, their modification or abrogation does not appear in the program, and the proposition of the United States looking to a prohibition of "*bullets that inflict unnecessarily cruel wounds, such as explosive bullets and, in general, every kind of bullet that exceeds the limit necessary for placing a man immediately 'hors de combat,'*"¹ has no connection therewith.

Great Britain, which did not sign these two Declarations in 1899, has announced through its delegation that it was adhering to both. The delegation of Portugal also has announced that its Government will sign the first one.

It was particularly agreeable to the subcommission to record these important adhesions at the moment of terminating its labors and, before declaring its task accomplished, the PRESIDENT took occasion to felicitate the Conference.

The observations contained in the present report will permit the Second Commission to render an account of the work of the first subcommission and of the results arrived at by the latter, with a view to completing and interpreting the provisions adopted by the First Conference. It is for the Commission now to pass upon these results.

¹ Annex 17.

THIRD MEETING

AUGUST 30, 1907

His Excellency Mr. Beernaert presiding.

The meeting is opened at 10:40 o'clock.

The minutes of the second meeting are adopted.

The President speaks as follows:

The Conference has already in plenary meeting approved the work of your first subcommission the same as you yourselves had approved it.

We have now to begin the second part of our task by the examination of the questions which our second subcommission has had to study.

It seemed especially fitting that Mr. ASSER should preside over the assembly to-day and I urged him to do so, but my efforts were in vain. At least, I am thus afforded the very great pleasure of rendering homage to the proved science and impartiality with which he has directed our debates. Happy are the assemblies well presided over! Mr. ASSER is of those regarding whom all the forms of praise have been exhausted, but it will be permitted me to thank him cordially in the name of all. (*Loud applause.*)

Three reports are on the order of the day and they sum up with talent and clearness the questions on which you have to decide.

First is that of Mr. LOUIS RENAULT on the opening of hostilities.¹ Can war break out suddenly without previous notice at the risk of taking everybody unawares, or is it necessary to give a formal notification, stating the reasons. Moreover, is it necessary that neutrals be notified and how? On both sides is it desirable that there should be a given period of time between the notification and the opening of hostilities, and in order that the neutrals may be held to discharge their duties?

On both points there were differences of view within your subcommission. We were unanimous in holding that war should be formally declared and that the motives should be stated, but the majority held that the granting of a period of grace was inconsistent with military exigencies of the present day (16 votes against 13 with 5 abstentions), and it was even decided that it was not [33] necessary that the neutral States should receive notice of the opening of hostilities if it were certain that they were aware of the existence of the state of war.

This discussion is analyzed in Mr. RENAULT's report with his usual clearness and as all of you have it before you it would appear to be useless to reread it. You have only to pass upon the two articles of the draft Regulations² and I believe it necessary to read them to you again.

¹ Annex A to this day's minutes.

² Annex 23.

DRAFT REGULATIONS ON THE OPENING OF HOSTILITIES

I. The contracting Powers recognize that hostilities between themselves must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

II. The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. However, it is understood that neutral Powers cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

No objections being raised to this text, the **PRESIDENT** declares it adopted.

The **President** declares that the order of the day calls next for the examination of two notable reports presented by Colonel **BOREL** on the rights and duties of neutral States on land and on the treatment of neutrals in the territory of belligerents.

The first of these reports¹ has treated of the rights and duties of neutral States. This question was not taken up in its entirety either by the Brussels Conference or by the first meeting of The Hague, and in the regulations of the laws of war there were inserted only a few provisions bearing upon it.

The work submitted to us will render a signal service to all the States and more especially to the small ones. They will know beforehand their rights and duties and will avoid the difficulties that formerly arose whenever war awoke interests and desires.

The draft arrangement concerning the rights and duties of neutral States on land, presented by the committee of examination of the second subcommission² is submitted for discussion.

Article 1, providing that *the territory of neutral States is inviolable*, is approved without discussion.

The same applies to Article 2, thus worded:

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral State.

[34] The **President** reads Article 3:

Belligerents are likewise forbidden:

a. to erect on the territory of a neutral State a wireless telegraph station or any other apparatus for the purpose of communicating with the belligerent forces on land or sea;

b. to use any installation of this kind established by them before the war on the territory of a neutral State.

Colonel **Michelson** reads the following declaration:

The delegation of Russia has the honor to declare, concerning Article 3, that it will accept the first paragraph a.

As to the second paragraph b of this article, first of all, the wording seems to us very obscure: does it treat of radiotelegraphic installations only or of telegraphic installations in general? If it is a question of telegraphic installations in general, paragraph b will be, in our opinion, in direct contradiction with the meaning of Article 8. In fact, if paragraph b of Article 3, and Article 8 should function simultaneously, it would necessarily result that the same belligerent, by

¹ Annex B to this day's minutes.

² Annex 34

virtue of Article 8, would have the right to employ telegraphic installations belonging, on the territory of a neutral State, to this neutral, and at the same time, by virtue of the prohibition contained in paragraph *b*, would not have the right to use on this same territory installations which might be his, the belligerent's, own property, a result which would seem to us at the least abnormal.

Besides, gentlemen, it will always be difficult if not impossible to prove that installations for telegraphic communication established in time of peace on foreign territory by a Government or by grantees and *ressortissants* of a State which has become belligerent, may have been constructed solely with a view to war. These installations will have in the majority of cases an absolutely pacific character and will serve commercial ends the benefits of which will be enjoyed not only by the countries become belligerent but also by all the other neutral countries. The neutral State which grants a telegraph concession to foreign subjects naturally always derives some advantages therefrom. The prohibitive character of paragraph *b* would deprive it of these advantages, would have then disadvantageous consequences for the neutrals themselves, and would without doubt interrupt the peaceful and normal development of the international telegraphic and radio-telegraphic system, so necessary to the civilization of the entire world.

I ask permission, gentlemen, to elucidate the considerations mentioned by an example, taken, so to speak, from life. There exists at this moment more than one telegraph line under foreign control and ownership which crosses my country and has stations there. Thus, the English telegraph line, called the Indo-European, passes over Southern Russia for hundreds of kilometers.

Supposing that paragraph *b* of Article 3 were adopted together with Article 8, and supposing that a war should break out between England and any other country whatsoever, Russia would then be obligated, by virtue of Article *b* in its present wording, sustained besides by the stipulations of Article 5, to close this line to the use of Great Britain, and, on the other hand, by virtue of Article 8, she would be obligated to open this same line to the use of the adverse party, a condition of affairs which presents itself as absolutely inadmissible, practically impossible of execution, and, besides, contrary to the very principle of impartial neutrality.

[35] The **President** asks Colonel MICHELSON if, as an expression of these observations, he proposes an amendment.

His Excellency Mr. **Tcharykow** remarks simply that the delegation of Russia will be unable to vote upon Article 3 in its present form.

The **Reporter** calls attention to the fact that the objections raised by the delegation of Russia appear to be hardly justified in view of the text of Article 3, and the commentary devoted thereto in the report. What is referred to in Article 3, letter *b*, is the supposition of a military servitude conceded in time of peace by one State to another and permitting the latter to install on the territory of the former stations or other apparatus for its exclusive use. In case of war a military installation of this kind could not be used, on neutral territory, by the belligerent State which would have established it there previously.

On the other hand, the lines established by foreign companies, or even by foreign States, and designed for public service, escape the application of Article 3, letter *b*, and are governed by Article 8 of the draft.

His Excellency Lord **Reay** declares that he accepts without exception, in the name of the British delegation, the interpretation just given by Colonel BOREL

on the subject of Article 3. He asks that it be made a matter of record in the minutes and adheres under this reservation to the text under discussion.

Colonel **Michelson** would prefer to have all ambiguity in regard to this article dispelled by modifying its wording.

His Excellency Mr. **Tcharykow** states that he reserves the right to present an amendment later.¹

Under these conditions the **President** declares Article 3 provisionally reserved

ARTICLE 4

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral State to assist the belligerents.

The Japanese delegation had proposed an amendment tending to forbid also the establishment of *bases of supplies*, but it did not return to it and the above text is adopted unchanged.

The **President** reads Article 5 whose text is as follows:

ARTICLE 5

The neutral State must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to suppress acts in violation of neutrality unless the said acts have been committed on its own territory.

The delegation of Japan not taking up again its proposal relative to the extension of the obligation of the neutral State to the territories where it has jurisdiction, this text is adopted without further remark.

ARTICLE 6

The responsibility of a neutral State is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

His Excellency **Réchid Bey** asks what will be the limit assigned to these frontier passages. He refers to the case of individuals who, after having crossed separately, would unite on the other side.

[36] The **Reporter** calls attention to the commentary especially devoted to Article 6 in the report. What the project prohibits, what the neutral State must prevent, is the formation or organization of corps or bands on its territory. It is there that the necessary criterion must be found to appreciate hypotheses such as that assumed by his Excellency the delegate of Turkey. If individuals crossing the frontier or preparing to cross it, their number, their attitude, their continuous marching past, or other circumstances, permit of proving the existence of an organization which until then may have escaped the surveillance of the authorities, the neutral State must do its utmost to arrest the formation of such bands on its territory. On the other hand, what the individuals who have crossed the frontier separately do beyond the frontier engages in no way the responsibility of the neutral State, which is bound to suppress only the acts committed on its own territory.

ARTICLE 7

A neutral State is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

The **President** thinks that certain passages of the report, in so far as concern Article 7 as well as Article 68, might seem a little excessive and he calls the

¹ Annex 35.

attention of the assembly and especially that of the Reporter to it. The latter declares that as the passages pointed out contain nothing essential, he will suppress them. Under these conditions Article 7 is adopted without further remark.

ARTICLE 8

A neutral State is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

The **President** recalls that his Excellency Lord REAY requested, as stated in the report of Colonel BOREL, "that it be specified that the liberty of a neutral State to transmit messages, by means of its telegraph lines on land, its submarine cables or its wireless apparatus, does not imply that it has any right to use them or permit their use in order to render manifest assistance to one of the belligerents."

His Excellency Mr. Tcharykow again takes up the observations already formulated by the delegation of Russia on the subject of paragraph *b* of Article 3.

The delegation of Russia proposes to add to paragraph *b* of Article 3 the following words: ¶*b.* to use any installation of this kind established by them before the war on the territory of a neutral State "*for purely military purposes and closed to public service.*"¹

Mr. Louis Renault asks if it would not suffice, in order to meet the objections of the Russian delegation, to insert the word *military* before the word *installation* in paragraph *b*, Article 3. The strictly military character of the installations in question is in reality quite sufficiently indicated by paragraph *a*, and the addition of this word in paragraph *b* would preserve the necessary bond between the two without there being any inconsistency between the stipulations of this article and that of Article 8 which has in view an entirely distinct hypothesis.

[37] His Excellency Mr. Keiroku Tsudzuki objects to the new wording proposed by the delegation of Russia, observing that the cases in which either wireless telegraphic apparatus or telegraphic cables are devoted to an exclusively military use are extremely rare since they can occur only in the immediate zone of hostilities. It is necessary then, according to him, to consider the methods of telegraphic or telephonic transmission which are in the hands of the Governments and which are destined for military use, although not exclusively; and these are the ones which the initial Japanese proposal, which served as a basis for the articles under discussion, had had in view.

Colonel Michelson remarks that the observation of his Excellency Mr. TSUDZUKI can only confirm the objections of the delegation of Russia since what the latter wishes to prevent is the introduction of a censorship in the public service at the risk of hindering international commercial communication.

The **President** remarks that the modifications proposed by the delegations of Russia and of France answer the same purpose. First, he puts to a vote the first of these amendments, taking into consideration the order in which it was presented.

The amendment is adopted by 31 votes to 2, and 3 abstentions.

Voting for: Germany, United States of America, Argentine, Austria-

¹ Annex 35.

Hungary, Belgium, Brazil, Bulgaria, Chile, China, Cuba, Denmark, Dominican Republic, Spain, France, Greece, Haiti, Italy, Luxemburg, Mexico, Montenegro, Panama, Paraguay, Netherlands, Persia, Roumania, Russia, Serbia, Siam, Switzerland, Turkey and Venezuela.

Voting against. Great Britain, Japan.

Not voting: Norway, Portugal, Sweden.

Following this vote his Excellency Lord **Reay** makes reservations respecting Articles 3, 8 and 9, paragraph 2.

The **President** having asked him on what points they were taken as regards Article 3, he specifies that they apply to the whole article and not to any special point.

His reservations are recorded.

His Excellency Mr. **Keiroku Tsudzuki** likewise makes reservations to Article 3, paragraph *b*.

No objection arises to the text of Article 9, thus worded:

ARTICLE 9

Every measure of restriction or prohibition taken by the neutral State in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents

A neutral State must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus

The **President** declares this article adopted with the above-mentioned reservations

[38]

ARTICLE 10

A neutral State which receives escaped prisoners of war shall leave them at liberty If it allows them to remain in its territory it may assign them a place of residence

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral State.

Major General **Yermolow** reads the following declaration:

The delegation of Russia has the honor to declare that it will accept the first paragraph of Article 10

As to paragraph 2 of this article, it seems to us in the proposed wording to be contrary to the duties of neutrality

In fact, gentlemen, the very principle of neutrality demands that a neutral State commit no act which can work to the advantage of one of the belligerents and to the detriment of the other But in liberating prisoners of war brought into its territory by troops seeking refuge there, will not the neutral State give, by this very act so to speak, reinforcements to that one of the belligerents from whom the liberated prisoners were taken? And if one of the belligerents has not himself succeeded in delivering, on the theater of war, those of his men who have fallen into the hands of the enemy, it would seem that no neutral State should have the right to come to his aid in doing for him what he has not succeeded in doing for himself, in returning to him his lost men and in interning, on the other hand, the troops of the adverse party which brought them in. Moreover, gentlemen, we think that the proposed wording of the second paragraph of Article 10 would in reality be in contradiction to the provisions of Article 59 of the Regulations of 1899. For this article prescribes that "wounded or sick brought into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part

again in the operations of the war." If, then, the neutral State has not the power to liberate wounded or sick prisoners brought into its territory by a belligerent, why and how could it have the right to liberate able-bodied prisoners brought into its territory by the same belligerent?

In view of the considerations stated, the delegation of Russia proposes to add to the second paragraph of Article 10 the following words: "on condition that the neutral State guard these prisoners so as to ensure their not taking part again in the operations of the war, or else liberate them only on parole."

The Reporter puts the Commission on guard against the confusion to which two very distinct situations might give rise. Article 59 of the Regulations of 1899, to which Major General YERMOLOW referred, in reality concerns the sending into neutral territory of wounded or sick belonging to belligerent forces. The second paragraph of Article 10 bears upon an entirely different case, that of a body of troops which is constrained to seek refuge in the territory of a neutral State and which thus obeys an absolute necessity in order to escape a capitulation. If the neutral State retained the prisoners of war cited by Article 10, paragraph 2, of the project, might not the victorious belligerent reproach him for failure in his duty of impartiality, in prolonging, beyond the time when the internment puts an end to it, the effects of the power which the captor had exercised over these prisoners?

[39] Major General Yermolow having maintained the point of view of the Russian delegation by removing all confusion in this respect, his Excellency Mr. **Carlin** calls attention to the fact that in leaving at liberty the prisoners of war which are brought into it by troops taking refuge on its territory, the neutral State only admits a consequence which would have manifested itself if the troops had capitulated instead of seeking refuge on neutral territory. Would not the neutral State expose itself to the reproach of the other belligerent if, in place of admitting this consequence, it violated it by interning prisoners who, without that, would have obtained their liberty following the capitulation?

His Excellency Mr. **Milovanovitch** supports the observations of Major General YERMOLOW: he considers it necessary, both from a theoretical and a practical point of view, to apply to the prisoners a treatment identical to that applied to the belligerents who brought them into neutral territory. If these last were compelled to take refuge on neutral territory, may it not be said that the prisoners were forced even more to do so. There results, therefore, that the same treatment must be applied to both.

Major General **von Gündell** is entirely in accord with the views expressed by his Excellency Mr. **CARLIN**. He believes he can cite a peremptory example in support of this thesis: Article 1 of the project in discussion declares in effect that the territory of a neutral State is inviolable; but, if instead of the frontier of a neutral State it is a question of a maritime frontier where one of the belligerents would corner an armed force of the other party, the latter would not hesitate to capitulate and the prisoners of war who were in the ranks would be by this act liberated. It cannot be otherwise when it is a question of passage into neutral territory.

Colonel **Michelson** objects that the belligerents have in their possession maps permitting them to foresee all the consequences of their movements. One cannot then, according to him, compare the case of a troop cornered on a maritime frontier to that of a troop which crosses the frontier of a neutral State. The victor

himself must take the necessary measures to cut off the retreat of the enemy on to neutral territory in order to deliver his prisoners. The thesis of his Excellency Mr. CARLIN would tend to give to the victorious belligerent in such a case all the advantages which a capitulation would give him. According to this reasoning the neutral State would be obliged then to return not only the prisoners but also the war material taken from the enemy, which has not been admitted.

The President remarks that the question has been extensively discussed by the committee. The objections, he says, bear only upon paragraph 2 of the article, and he considers its first paragraph adopted without discussion.

He reads the new wording proposed for the second paragraph and puts it to a vote, specifying that if the addition proposed by the delegation of Russia is not adopted, the result of this vote will be to maintain the original text.

The Russian amendment is rejected by 31 votes against 3 and 2 abstentions

His Excellency Mr. Tcharykow makes reservations, in the name of the delegation of Russia, to the second paragraph of Article 10.

Article 10 is adopted.

[40]

ARTICLE 11

The fact of a neutral State resisting, even by force, attempts to violate its neutrality cannot be regarded as an act of hostility.

The President, after stating that this article might have been considered as unnecessary, declares it adopted without observations. The Danish amendment but lately proposed and set aside, has not been presented again

Article 57*a* and *b*, emanating from the Japanese delegation,¹ referred by the first subcommission to the second, and set aside by the committee, are not produced again. The proposition is then discarded.

The PRESIDENT adds that there remains nothing more to regulate on the subject of the rights and duties of neutrals but a question of form. While reserving to the drafting committee the care of arranging it, the Reporter suggests a solution which in his opinion would be a happy one and which would consist in establishing a special convention on this subject.²

The PRESIDENT asks the assembly if it has any remarks to make on this subject, and declares his personal assent; the drafting committee will take into consideration such of these remarks as may concern it. He recalls that the same remark is applicable to the articles of Section IV of the Regulations respecting the laws and customs of war on land.

The PRESIDENT: We pass now to Colonel BOREL's second report on the subject of neutrals themselves,³ and to the project annexed thereto relative to a new section to be added to the Regulations respecting the laws and customs of war on land.⁴

This project begins with a definition of the word "*ressortissants*" which might give rise to confusion

Does this still modern expression concern only nationals or is it applied also to domiciled aliens?

The dictionaries say *qui ressort de* or *du ressort*, which does not throw much light on the question.

¹ Annex 32

² See the text of articles adopted, vol. 1, p. 148 [148]

³ Annex C to this day's minutes.

⁴ Annex 44.

The **Reporter** thinks that if the drafting committee is of the opinion that the word "*ressortissant*" is ambiguous, it will itself find a more exact term.

The **President** recalls that the two meanings have already been given to the word "*ressortissant*," and that it is expedient therefore to call the attention of the committee to it. The same word must not apply to two things.

His Excellency Mr. **Hagerup** believes that the double meaning of the word "*ressortissant*" ought to be taken into consideration conformably to the legislative acts which have accepted the principle of nationality or that of domicile.

His Government accepts neither Article 64 nor Article 65 unless the amendment of Great Britain is adopted.

The **Reporter** proposes, for the sake of harmony, to replace the word "*ressortissants*" by the word "nationals," and believes that the question can be settled the same in the other commissions.

[41] Article 61 is declared adopted under the following form:

ARTICLE 61

The nationals of a State which is not taking part in the war shall be considered as neutrals

His Excellency Lord **Reay** reads the following declaration:

GENTLEMEN: I would like to say a few words in justification of the attitude adopted by the British Government in regard to the proposition made by the delegation of Germany¹ for the improvement of the condition of neutrals in time of war on land.

Great Britain has always been among the first to seek to mitigate the evils and rigors of war, and she has not failed to give proofs of it in the past. It is then not the principle of the German project but the method extolled which seems to her to be subject to criticism.

This project, gentlemen, contains two fundamental principles which admit for the neutrals:

1. Exemption from all military service.
2. A more favorable treatment in regard to property than that which would be accorded to nationals.

We recognize that as a general rule the neutral is exempt from all military service in the State where he resides. However, in the British colonies and, in a certain measure, in all countries in process of development, the situation is quite different, and the entire population, without distinction of nationality, may be called to arms to defend their menaced homes.

Articles 64 and 65 of the project do not forbid the foreigner to enlist of his own accord and to serve in the national army, but expressly oppose the use of all constraint even if used in the interest of the individual constrained. If the project were adopted just as it is, a foreigner would have the right first to refuse to serve in the militia and then to demand indemnification for losses sustained when he would have done nothing to defend his property. It seems logical that the right of the foreigner to indemnification should necessarily involve the recognition of the right of the State to requisition his services for the defense of the common interests.

The committee of examination in the first place worded Article 65 as follows:

¹ Annex 36.

The provision of Article 64¹ paragraph 1, does not apply to persons belonging to the army of a belligerent State either in virtue of the legislation of that State, or through a voluntary enlistment previous to the war.

In the final draft accepted by the committee the words "either in virtue of the legislation of that State, or" were omitted. If they had been maintained in the text Great Britain would without doubt have accepted Articles 64 and 65, since the rights resulting from the situation in her colonies were there safeguarded. We propose therefore that these words be reinserted in the text

As to the second principle of the proposition, we believe that war must in all possible measure be limited to the direct action of the armies, and that the [42] belligerents must do all in their power in order not to expose the civil population to the evils or losses which would be avoidable. This was the master thought of the Convention of 1899. We think, in a word, that the neutral must be assimilated to the nationals of the belligerent on the territory of the latter and to the subjects of the adverse party in occupied country. This double assimilation gives him all the guaranties necessary. If the need should make itself felt of giving to the civil population further guaranties or even if it should appear that one might ameliorate the lot of the non-combatants, the true means of securing this would be to fill the gaps of the 1899 Convention, since the neutral would not fail to benefit on a footing of equality with the national of the belligerent. But it is inadmissible that one accord privileges to neutrals living in the territory of a belligerent only to refuse them to the nationals of the latter.

Apropos of this and in support of the thesis that we maintain, I wish to cite to you the words pronounced by Prince BISMARCK in the Reichstag, on refusing to indemnify German subjects for losses sustained by them in France during the war of 1870:

"The citizen of a country who goes to take up his residence in a foreign country to earn his living cannot reasonably expect an indemnity because war has brought him material loss. He must always remember that work in foreign countries is accompanied by great risks. This principle, obviously, is especially applicable to remote countries where the law is not respected as it is in Europe. Often work in a foreign country is more lucrative but it is also more risky."

This argument appears to me equally applicable to the case we are examining. Neutrals established in a foreign country accept in time of peace the advantages of their situation; it is then only just that they accept the risks and disappointments. One cannot conceive not only of their being placed in a special situation thanks to which they would enjoy all privileges in time of peace and would be exempt from the penalties inseparable from war, but also of their being able to devote themselves without risk to commercial transactions which hostilities would have rendered very lucrative.

It is for these reasons that we can accept neither Articles 61, 62 and 63 of Chapter I, entitled "definition of a neutral person," nor Articles 66, 67, 68, 69 and 72 of Chapter III, which treats of the property of neutral persons. We have no objection in principle to Article 70 and we would not fail to accept it if it were incorporated in the draft convention concerning the rights and duties of neutral States on land.

You are aware that we declared, when the project was communicated to us,

¹ Article 64. Belligerent parties shall not require of neutrals services directly connected with the war.

that the British Government would not fail to examine carefully all arguments which, in the course of the discussion, might be advanced in favor of the project. However, these have not been of a nature to convince us. Moreover, it is not clear what procedure may be employed to determine the amount of indemnity due. We know by experience that the claims for indemnity, formulated at the end of hostilities, are often exaggerated to the point of being fraudulent. Will it be given to the belligerent to decide in the last resort or will the neutral have a right of appeal? On this point the project is silent.

We are firmly convinced that in according a privileged situation to neutrals one will have but increased the difficulties and the causes of conflict, and that powerful neutrals will be tempted to intervene in a manner to cause injury to the sovereign rights of weak belligerents.

[43] We are also of the opinion that it will be impossible, from a purely military point of view, to distinguish in time of war between the property of a neutral and that of a national of the belligerent State, and we believe that it would be unjust to impose upon the general in chief a line of conduct which he, with the best intentions in the world, will not be able to observe. In practice the regulation cannot be applied, but, even if it could be, such complications would result from it that we believe the situation would only be worse.

We have accepted the new clause concerning indemnification of persons injured as a consequence of violations of the laws and customs of war, and the principle is equally applicable to all the inhabitants, either nationals of the belligerent or neutrals, of the occupied territory. As to neutrals on our own territory, we shall treat them on a footing of equality with our own nationals.

The **President** reads Article 62, thus worded:

ARTICLE 62

A neutral cannot longer avail himself of his neutrality and of the special privileges resulting therefrom according to the terms of Articles 64-72:

a. If he commits hostile acts against a belligerent party;

b. If he commits acts in favor of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality than a *ressortissant* of the other belligerent State could be for the same act.

His Excellency Lieutenant General Jonkheer den Beer Poortugael proposes the following modification: "*A neutral cannot longer avail himself of the special privileges resulting from his neutrality, etc.*"

Colonel Borel deems it necessary to preserve the present wording. The proposed modification would not answer in the case of a neutral who serves in the ranks of a belligerent and who is made prisoner. It would contain a hiatus.

After an exchange of views between their Excellencies the **President**, Mr. **Carlin**, Lieutenant General Jonkheer den Beer Poortugael and the **Reporter**, Mr. **Tcharykow** announces that the delegation of Russia makes reservations to the first paragraph of this article, concerning which he will explain later.

The **President** declares that since there are some reservations at present unexplained, he proposes to postpone the vote on Article 62 until further elucidations are presented.

ARTICLE 63

The following acts shall not be considered as committed in favor of one of the belligerent parties in the sense of Article 62, letter *b*:

a Supplies furnished or loans made to one of the belligerent parties, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from one of these territories;

b. Services rendered in matters of police or civil administration.

[44] The **President** finds the report a little extreme regarding certain points.

The **Reporter** replies that here, as in the commentary devoted to Article 7 of the draft already adopted, he wished not to lay down a new principle of international law in the matter of treason or of contraband, but simply to state a condition of things of which it is hardly possible to make an abstraction. He declares, besides, his intention of suppressing as superfluous the passage of his report referred to by the **President**.

No other observation being made the article is declared adopted.

ARTICLE 64

Belligerent parties shall not require of neutrals services directly connected with the war.

Exception is made of sanitary services or sanitary police service absolutely demanded by the circumstances. These services shall, as far as possible, be paid for in cash. If not, a receipt shall be given and payment effected as soon as possible

The **President** recalls that Article 64 combines former Articles 63 and 66.

His Excellency Mr. **Brun** makes reservations as to the first paragraph of the article in question; he calls attention to the fact that its tenor is in contradiction to the conscription law of his country which calls into military service not only the nationals but also foreigners domiciled in Denmark after a certain time

His Excellency Mr. **Mavrocordato** makes the same reservations.

His Excellency Mr. **van den Heuvel** considers that these reservations bear rather upon Article 65 as it is explained in Colonel **BOREL**'s report.

The **President** is of the same opinion and proposes to pass to the discussion of Article 65; the vote will then be taken at the same time on the two articles.

ARTICLE 65

The provision of Article 64, paragraph 1, does not apply to persons belonging to the army of a (belligerent) State through voluntary enlistment.

His Excellency Mr. **van den Heuvel**: Article 64 formulates a rule to the effect that a belligerent cannot require war services of neutrals established on its territory. Nothing more legitimate in principle. But this rule necessarily carries with it some exceptions.

Article 65 formulates one for the case in which the neutral would have voluntarily enlisted. The neutral who binds himself by an enlistment must very justly be obligated to accept all the consequences.

The Belgian delegation proposed ¹ to add to this exception, which is the only one provided for in the text, two other cases: that in which the foreigner has no determined nationality and that in which the foreigner resident in the country does not fulfill his military duties towards his fatherland

¹ Annex 46.

If the foreigner has no nationality he is not even, properly speaking, a neutral.

If the foreigner does not fulfill his military obligations towards his country, it is lawful to say to him: "You must choose whether you will fulfill your military service in your country or whether you will be incorporated in the [45] army of the State where you reside. Military duty is imposed as a recognition of and a compensation for the rights which you enjoy."

The difficulties presented by the question under discussion arise not only from differences which exist between the militia laws of the States, but also in great part from the variety of systems followed for determining nationality. Thus it is that in a great number of countries the legislation imposes the quality of national upon residents who have no determined nationality or who, born in the region, do not fulfill their military duties towards their fatherland.

Since the deposit of the amendment proposed by Belgium two new matters have come up. In Article 61 the word "*ressortissant*" has been replaced by the word "national," and the British delegation has deposited on its part an amendment to Article 65.¹ We reserve to ourselves the right to examine whether the change admitted in Article 61 does not remove the doubt which the first exception, proposed for foreigners of undetermined nationality, had aimed at dispelling. And, moreover, after having heard the elucidation of the British proposal, we shall see if it is not expedient to agree upon a more general text than that proposed by our second exception.

The President moves to postpone the discussion until Monday at half-past ten, which motion is adopted.

The meeting is adjourned at 1 o'clock.

[46]

Annex A

OPENING OF HOSTILITIES

REPORT TO THE SECOND COMMISSION ^{2 3}

The Russian program contains the following topic:

Additions to be made to the provisions of the Convention of 1899 relative to the laws and customs of war on land—besides others, those concerning: *the opening of hostilities* and *the rights of neutrals on land*.

It was the duty of the Second Commission to study this part of the program; the present report, however, deals only with "the opening of hostilities."

¹ Annex 45.

² The report was presented to the Second Commission in the name of a committee of examination thus made up: president, his Excellency Mr. ASSER; members: Major General VON GÜNDELL, Brigadier General DAVIS, Major General Baron GIESL VON GIESLINGEN, his Excellency Mr. A. BEERNAERT, his Excellency Mr. VAN DEN HEUVEL, his Excellency Mr. DE BUSTAMANTE, his Excellency Mr. BRUN, Mr. LOUIS RENAULT, reporter; his Excellency Lord REAY, Lieutenant General Sir EDMOND R. ELLES, his Excellency Mr. TSUDZUKI, his Excellency Mr. EYSCHEN, his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL, his Excellency SAMAD KHAN, MOMTAS-ES-SALTANEH, his Excellency Mr. BELDIMAN, his Excellency Mr. CARLIN, Colonel BOREL.

³ See also the report to the Conference, vol. i, p. 131 [131]

The question whether there is an obligation upon a Government intending to make war to give notice to its adversary before beginning hostilities has been discussed for years and has given rise not only to lengthy theoretical expositions but also to frequent recriminations between belligerents. It would be a vain task, from the point of view that we must take here, to review the practice in the various wars since the beginning of the last century in an effort to determine whether there is, according to positive international law, any rule on this subject. We have only to ask ourselves whether it is advisable to lay one down, and if so, in what terms.

As to the first point, there can be no doubt. It is clearly desirable that the uncertainty seen in various quarters should cease. Everybody is in favor of an affirmative answer to the first question, placed before us by the president of the second subcommission, his Excellency Mr. ASSER, in his *questionnaire*.¹

The subcommission has had before it a *proposition* of the French delegation² and an *amendment* thereto offered by the Netherland delegation.³ The proposition and its amendment were alike in requiring a warning to be given before opening hostilities and also a notification to neutrals. The difference between them lay in the interval between the warning and hostilities, which the Netherland delegation proposed to fix definitely. Some special questions have also been raised regarding the notification to neutrals. We shall give you an explanatory statement on these several points.

[47] The French proposition was worded as follows:

ARTICLE 1

The contracting Powers recognize that hostilities between themselves must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay

The main provision of this proposal, which was inspired by a resolution passed by the Institute of International Law at its meeting at Ghent in September, 1906, is easily justified. Two distinct cases are provided for. When a dispute occurs between two States, it will ordinarily lead to diplomatic negotiations more or less lengthy, in which each party attempts to have its pretensions recognized, or at least to secure partial satisfaction. If an agreement is not reached, one of the Powers may set forth in an ultimatum the conditions which it requires and from which it declares it will not recede. At the same time it fixes an interval within which a reply may be made and declares that, in the absence of a satisfactory answer, it will have recourse to armed force. In this case there is no surprise and no equivocation. The Power to which such an ultimatum is addressed can come to a decision with a full knowledge of the circumstances; it may give satisfaction to its adversary or it may fight.

Again, a dispute may arise suddenly, and a Power may desire to have recourse to arms without entering upon or prolonging diplomatic negotiations that it considers useless. It ought in that case to give a direct warning of its intention to its adversary, and this warning ought to be explicit.

¹ Annex 19.

² Annex 20.

³ Annex 22.

When an intention to have recourse to armed force is stated conditionally in an ultimatum, a reason is expressed, since war is to be the consequence of a refusal to give the satisfaction demanded. This is, however, not necessarily the case when the intention to make war is made manifest directly and without a previous ultimatum. The proposal set out above requires that reasons be assigned in this case also. A Government ought not to employ so extreme a measure as a resort to arms without giving reasons. Every one, both in the countries about to become belligerents, and also in neutral countries, should know what the war is about in order to form a judgment on the conduct of the two adversaries. Of course this does not mean that we are to cherish the illusion that the real reasons for a war will always be given; but the difficulty of definitely stating reasons, and the necessity of advancing reasons not well substantiated or out of proportion to the gravity of war itself, will naturally arrest the attention of neutral Powers and enlighten public opinion.

The warning should be previous in the sense of preceding hostilities. Shall a given length of time elapse between the receipt of the warning and the beginning of hostilities? The French proposition specifies no interval, which implies that hostilities may begin as soon as the warning has reached the adversary. The time limitation before war is begun is thus less determinable than in the case of an ultimatum. In the opinion of the French delegation the necessities of modern warfare do not allow of a requirement that the party desiring to take the aggressive should grant further time than what is absolutely indispensable to let its adversary know that force is to be employed against it.

The principle of the French proposal met with no objection and the text was [48] voted almost unanimously by the subcommission, after the delegations of Germany, Great Britain, Japan and Russia had expressly declared themselves in accord with it.

The delegation of the Netherlands desired to supplement the principle as follows:

The contracting Powers recognize that hostilities between themselves must not commence until the lapse of twenty-four hours after an explicit warning, having the form of a reasoned declaration of war, or of an ultimatum with conditional declaration of war, has officially come to the attention of the adversary's Government.

The difference between this and the French proposal lies in requiring a fixed interval between the receipt of the warning and the opening of hostilities. The need for this delay was explained by Colonel MICHELSON, speaking for the Russian delegation, in these words:

The problem of such a delay is intimately connected with the relation which exists between the peace and war establishments of every country. Consequently a result of its adoption would be a more or less considerable reduction of expenditures. The time may not be so far distant after all when we shall be able to distinguish between the troops and other preparations for war which every country in its own sovereign judgment deems requisite in its political situation, and those that it is compelled to maintain only through the necessity of being constantly in readiness for fighting. By establishing a certain interval between the rupture of peaceful relations and the beginning of hostilities, an opportunity would be afforded to such countries as may desire it to realize certain economies during times of peace. It is undeniable

that these economies would be beneficial in every way, and could not fail to bring about a great relief from the burden of armed peace, a relief all the more acceptable because it would in no way affect the right of each nation to fix its own forces and armament solely in accordance with its own views and needs.

There is still another advantage to be derived from the proposed delay. It would leave to friendly and neutral Powers some precious time which they could use in making efforts to bring about a reconciliation, or to persuade the disputants to submit their causes of difference to the high Court of Arbitration here. But, while speaking of this subject of a delay, we must not lose sight of what is at present possible. The idea of any considerable delay is not yet developed in the consciences of the people of the nations. Consequently it would perhaps not be wise to go too far with our desires, in order that we may not get beyond what is really possible in practice at the present day. So let us content ourselves with accepting the delay of twenty-four hours which has been proposed by the delegation of the Netherlands. Let us leave to the future the work of the future, and merely express our hope that in the future the benefits of a still longer delay will be secured.

While the force of this reasoning is undeniable, it did not convince the majority of the subcommission. It did not appear consistent with military exigencies of the present day to fix such an interval; a great advance is gained, however, in securing the admission of the need of a previous warning. Let us hope that in the future we shall make a further advance; but let us not proceed too rapidly. It is noteworthy that the Institute of International Law, in its resolution referred to above, considered that it could not go so far as to suggest a definite interval, although in such a matter as this an assembly of jurists might be expected to be less conservative than an assembly of diplomatists and military and naval men. *It limited itself to saying: "Hostilities shall not commence before the expiration of a delay sufficient to make it certain that the rule of previous and explicit notice cannot be considered as evaded."*

An obligation to make a declaration of war include the reasons therefor awakened some scruples as being contrary to provisions in some constitutions. Thus the Cuban delegates made the following statement: "[49] of the fact that paragraph 12 of Article 59 of the constitution of Cuba mentions among the powers of Congress that of declaring war, it is not possible for the delegation to subscribe to any act that does not reserve to our Congress the right to determine the form and conditions of such a declaration." On the other hand, General PORTER declared that the French proposal was not inconsistent with the provisions of the American federal constitution, under which Congress has the power to declare war. Indeed, there seems to be some misunderstanding on this point. We should make a distinction between two acts that are often confused because the same expression is used to describe both: namely, the act of deciding on war and the act of communicating this decision to the adversary. According to the constitutions the decision belongs to the sovereign or head of the State, either acting alone or in conjunction with the representatives of the people; but the notification is essentially for the executive. Since the notification closely follows the decision, they are combined under the term "declaration," and this is especially the understanding where there is externally only one sovereign act. Bearing this in mind, it is easily shown that the French proposition voted by the subcommission is not at all inconsistent with constitutional provisions of the kind

indicated. The liberty of a congress to decide on war in whatever way it chooses is not touched. Can it be supposed that war will be determined upon lightly, even though the formal resolution may not indicate the reasons, and is it too much to ask of a Government which, in execution of such a decision, declares war that it give its reasons therefor? We do not think so.

According to the second article of the French proposal, "the existence of a state of war must be notified to the neutral Powers without delay." As a matter of fact, war not only modifies the relations existing between belligerents, but it also seriously affects neutral States and their citizens; it is therefore important that these be given the earliest possible notice. It is hardly to be supposed that, with the present rapid spread of news, much time will elapse before it is everywhere known that a war has broken out, or that a State will be able to invoke its ignorance of the existence of a war in order to evade all responsibility. But as it is possible, in spite of telegraph and cable lines and radio-telegraphy, that the news might not of itself reach those concerned, precautions must be taken. Accordingly two amendments were offered. The first, from the Belgian delegation, was as follows: "The existence of a state of war must be notified to the neutral Powers. This notification, which may be given even by telegraph, shall not take effect in regard to them until forty-eight hours after its receipt"¹ The other, offered by the British delegation, in an article contained in a proposal submitted to the Third Commission and referred to this subcommission, said: "A neutral State is bound to take measures to preserve its neutrality only after it has received from one of the belligerents a notification of the commencement of the war"²

Let it be said at once that the amendment of the Belgian delegation could not be taken literally. A neutral State which receives notification of the state of war clearly has not 48 hours in which to violate its neutrality with impunity; all that should be given to it is the time necessary to take measures to have its neutrality observed

The view which has been adopted is that it is impracticable to fix any delay. The governing idea is a very simple one. A State can be held to duties of neutrality only when it is aware of the existence of the war creating such duties. From the moment when it is informed, no matter by what means (provided there is no doubt of the fact), it must not do anything inconsistent with neutrality [50] Is it at the same time obliged to prevent acts contrary to neutrality that might be committed on its territory? The obligation to do so presupposes the ability. What can be required of a neutral Government is that it take the necessary measures without delay. The interval within which the measures can be taken will vary, naturally, according to circumstances, extent of territory, and facility of communication. The interval of forty-eight hours, as was proposed, might be, in a given case, too long or too short. There is no need of establishing a legal presumption that the neutral is or is not responsible. It is a question of fact which can be determined usually with but little difficulty.

The subcommission therefore confined itself to the following draft:

The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph

¹ Annex 21

² *Post*, Third Commission, annex 44.

In the committee of examination it was pointed out that the rule phrased in this way is too positive, since it implies that a neutral Government which through some circumstance or other had not received the notification provided for, even though it is unquestionably aware of the existence of a war, could evade all responsibility for its acts, simply by relying on the absence of a notification. The essential point would seem to be that a Government must be aware of the existence of a state of war in order to take necessary measures. Proof is easy when a notification is given; but if there has been no notification, the belligerent who complains of a violation of neutrality must clearly establish that the existence of the war was with certainty known in the country where the alleged unlawful acts took place.

After a discussion the majority of the committee decided to add the following clause:

However, it is understood that neutral Powers cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

This text seems to take all interests sufficiently into account.

It has been asked what form ought to be given to the provisions thus adopted. Shall they be placed in a special convention or declaration? Or shall they be embodied in the Regulations of 1899 on the laws and customs of war on land? Without wishing to trespass on the field of the drafting committee, it is proper to say that the latter mode may be dismissed from consideration since the provisions are of a general character applying to naval war as well as to war on land. Besides, provisions respecting the duties of neutrals do not ordinarily fall within the scope of regulations intended to serve as instructions for troops. We might consider combining all the provisions concerning neutrals adopted by the Second and Third Commissions; but it should be borne in mind that our Article 2 is closely related to Article 1 and ought not to be separated from it. The drafting committee, however, will have the final decision.

[51]

Annex B

ARRANGEMENT CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL STATES ON LAND

REPORT TO THE COMMISSION ^{1 2}

MR. PRESIDENT AND GENTLEMEN: The question of the rights and duties of neutrals is too intimately connected with the codification of the laws and customs

¹ This report was presented to the Second Commission by a committee of examination composed of his Excellency Mr. ASSER, chairman; Major General von GÜNDELL, Brigadier General DAVIS, Major General Baron GIESL VON GIESLINGEN, his Excellency Mr. A. BEERNAERT, his Excellency Mr. VAN DEN HEUVEL, his Excellency Mr. LOU TSENG-TSIANG, his Excellency Mr. DE BUSTAMANTE, his Excellency Mr. BRUN, Mr. LOUIS RENAULT, his Excellency Lord REAY, Lieutenant General Sir EDMOND R. ELLES, his Excellency Mr. KEIROKU TSUDZUKI, his Excellency Mr. EYSCHEN, his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL, his Excellency SAMAD KHAN, MOMTAS-ES-SALTANEH, his Excellency Mr. BELDIMAN, his Excellency Mr. CARLIN, and Colonel BOREL, reporter

² See also the report to the Conference, vol. i, p. 136 [136].

of war on land to have passed unnoticed at the time of the First Peace Conference. His Excellency Mr. EYSCHEN, the first delegate of Luxemburg, called attention to it in the subcommission which was instructed to prepare what afterwards became the Regulations of 1899; and although the Commission felt constrained to confine itself to an examination of the questions contained in the text of the Declaration of Brussels, the Conference, at its suggestion, expressed and inserted in its Final Act the recommendation that "the question of the rights and duties of neutrals may be inserted in the program of a conference in the near future."

This *vœu* has been realized and we are submitting a report on the task entrusted to us of examining the question thus bequeathed to the Second Peace Conference.

The subject-matter to be dealt with falls very naturally into two parts. First of all, there must be determined the situation which war creates for neutral States as such, their rights and their duties with regard to the Powers in conflict. In the second place, consideration must be given to individuals from neutral States and to the kind of control to which they may properly be subjected in their relations with the belligerents. Each of these two questions will be made the subject of a separate report.

As to the rights and duties of neutral States, the Commission had before it a project emanating from the French delegation,¹ on which were grafted various amendments presented by other delegations,² and also some points referred to it for examination by other commissions or subcommissions.³ We shall have occasion to mention them separately in the course of the present report.

No more than the authors of the Regulations of 1899, have we dreamed of [52] settling in numerous articles all the controversies that arise in theory; we have confined ourselves to regulating some questions whose practical importance has been demonstrated by experience, and which appear possible of solution in accordance with the ideas generally accepted to-day.

The proposition of the French delegation accorded with this idea, and General AMOUREL, speaking for them, said: "This proposition doubtless will be criticized for failing to provide for everything. It is quite possible that the Powers may be obliged to add to it provisions setting forth all the conditions under which they intend, when occasion arises, to exercise their neutrality. But if our proposition could meet with unanimous approval, the Powers would have as a point of departure an established and already familiar groundwork common to all, possessing the great superiority of having originated in calm and free discussion."

At the outset a question of considerable importance presented itself to the Commission. Should the new provisions be considered as addressed exclusively to the neutral States and as tracing their line of conduct for them, or should they be given, as far as possible, the more extensive character of general provisions applicable to all parties?

The latter point of view was the one taken by the proposals of the delegation of Belgium,⁴ and it was advocated by that delegation as follows:

The object of several of the duties of neutral States is to prevent them from tolerating within their territory improper conduct on the part of belligerents.

¹ Annex 24.

² Annexes 25-31

³ Annex 32.

⁴ Annex 30

It is well, therefore, not to confine ourselves to an assertion that neutrals are bound to prevent such acts. It is important to declare that the obligations of neutrals in this regard flow from an inhibition of general application which logically concerns belligerents primarily before affecting neutrals.

The Commission having accepted without objection the idea of the Belgian delegation, the project begins with the duties of belligerent Powers, enumerating the acts from which these States must abstain and those which should not be performed in their behalf. It next lays down the corresponding obligation of the neutral State, taking care to distinguish the acts which are not included in this obligation and in regard to which the neutral State has no other duty towards the belligerents than that of impartiality. It finally deals also with a few isolated points, the regulation of which appeared possible and desirable.

Thus much said, we will review the articles of the project,¹ giving the necessary explanation with each.

ARTICLE 1

The territory of neutral States is inviolable.

On the motion of the Belgian delegation,² the Commission thought it well to put at the head of the project this provision, which consecrates the first and fundamental effect of neutrality during war.

ARTICLE 2

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral State.

This article, adopted on the motion of the British delegation,³ is the direct consequence of the principle enunciated in Article 1. There would be a violation of the territory of a neutral State in the act of a belligerent using this [53] territory for the passage of either troops or convoys of munitions of war or supplies. The prohibition contained in Article 2 is addressed to the belligerents themselves; it is not in conflict with Article 7, which refers only to commercial enterprises of individuals

ARTICLE 3

Belligerents are likewise forbidden ·

(a) To erect on the territory of a neutral State a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or sea;

(b) To use any installation of this kind established by them before the war on the territory of a neutral State.

The provisions of this article, the first proposed by the British delegation, the second by the delegation of Japan, follow directly from the principle affirmed in Article 1. The inviolability of the territory of a neutral State is incompatible with the use of this territory by a belligerent in aid of any of the objects contemplated by Article 3.

Here, likewise, there can be no conflict between the provisions of Article 3 and those contained in Article 8 below. The first of these articles contemplates the

¹ Annex 34.

² Annex 30.

³ Annex 25.

installation by belligerent parties of stations or apparatus on the territory of the neutral State or the use of stations or apparatus established by them in time of peace on this territory. Article 8, on the other hand, treats of public service utilities operated in a neutral country, either by the neutral State or by companies or individuals.

ARTICLE 4

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral State to assist the belligerents.

While borrowing this article from the French proposal,¹ the Commission gave it the tenor of a general prohibition. What it prohibits is the formation of a corps of combatants to assist a belligerent, and also the creation and operation of recruiting agencies, the opening of which might be attempted on neutral territory for the same purpose.

The Japanese delegation had asked that belligerents be forbidden to make use of neutral territory for the purpose of establishing "bases of supplies." The reply was made that a prohibition of that kind would run the risk of being utterly illusory for the simple reason that, as a matter of fact, belligerent States will always be able to obtain supplies from the neutral territory through agents and other intermediaries. Moreover, the commerce of the inhabitants of neutral countries with belligerents is free, and Article 7 of the project states specifically that the neutral State is not obliged to prevent it. Confronted by this objection the Japanese delegation did not insist on its motion.

ARTICLE 5

The neutral State must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to suppress acts in violation of neutrality unless the said acts have been committed on its own territory.

[54] Article 5 is the logical and necessary counterpart of Articles 2 to 4. It is not sufficient to lay down the prohibitions mentioned in the preceding articles; it is also necessary to determine and state precisely (and that is just what the project herewith submitted does) the duty of the neutral State in regard to prohibited acts that are or might be committed on its territory. This duty is very simple, but it does not always appear in exactly the same form.

A violation of neutrality by one or other of the belligerents will be prevented by material means by the neutral State, all rights of the latter State being reserved as to claims on its part arising from such acts and as to the damages it will be entitled to demand. Acts contrary to neutrality committed on neutral territory by individuals fall, on the other hand, under the jurisdiction of the neutral State, and particularly under the penal provisions that it may have thought proper to enact.

Why does Article 5, in its second paragraph, use the general terms "acts in violation of neutrality," while the project only mentions as such those acts enumerated in Article 4? The reason is simple; as stated above, it would be impossible to make here a complete enumeration of all acts that might be considered in violation of neutrality, and therefore it must be left to the neutral State to do as much more as it deems necessary, in this respect, either in its neutrality proclamation or otherwise. On the other hand, it was not inappropriate to settle

¹ Annex 24.

by a precise text the controversy that had arisen on the subject of what might be called the territorial extent of the duties and jurisdiction of the neutral State in the matter of acts in violation of its neutrality. Is the neutral State called upon to proceed against its *ressortissants* for acts committed by them outside of its territory? The present project settles the question in the negative and enunciates the principle that, even in what concerns its *ressortissants*, the duty of the neutral State is limited by its frontiers. It is called upon only to suppress acts committed on its territory, without having to distinguish within these limits whether the act in violation of its neutrality has been committed by its national or a foreigner.

On this subject the Japanese delegation raised the question whether it would not be well to extend the obligation of the neutral State to the territories where it has jurisdiction.

While granting the justice, theoretically, of this idea, the Commission was obliged to recognize that any attempt to make it the subject of a provision in a convention would encounter difficulties of verbiage and application that had better be avoided. As a matter of fact, under the hypothesis being discussed, the situations would only be exceptional, if not abnormal, and the real facts involved would furnish the only criterion for determining, not only the neutral State really responsible, but also the extent of its duties.

ARTICLE 6

The responsibility of a neutral State is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

On this point a difference of opinion arose in the Commission.

The German proposal,¹ concerning neutrals on the territory of the belligerents, enunciated the double principle: (1) that neutrals henceforth must [55] not serve, even voluntarily, in the belligerent forces; (2) that neutral States should forbid their *ressortissants* to enlist in belligerent forces.

This last clause—had it prevailed—would have been inconsistent with the provisions of Article 6, which differs from the French proposal² only by a slightly different wording.

But, in view of the opposition it encountered, the German delegation abandoned its proposal as far as it concerns war service which *ressortissants* of neutral States freely offer or consent to.

Article 2 of the French proposal was expressed in the following terms:

A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. *But its responsibility is not engaged by the fact of certain of its citizens crossing the frontier to offer their services to one or other of the belligerents.*

It will be noticed at once that the Commission separated the two sentences of this article,³ making two distinct articles of them, one of which, Article 4, states a prohibition that the neutral State is bound to enforce (Article 5, paragraph 2), while the other, Article 6, specifies an act with respect to which a neutral State may remain indifferent. But the antithesis that the French proposal exhibited very clearly by uniting these two sentences in one article, as above,

¹ Annex 36.

² Annex 24.

³ Annex 34.

nevertheless subsists and merits notice here. To appreciate the exact sense and scope of Article 6 it is well to compare it with the text of Article 4. It goes without saying that the neutral State must prevent its frontier being crossed by corps or bands which have already been organized on its territory without its knowledge. On the other hand, individuals may be considered as acting in an isolated manner when there exists between them no bond of a known or obvious organization, even when a number of them pass the frontier simultaneously.

Moreover, it makes no difference whether these individuals acting separately are or are not citizens of the neutral State. Article 6 makes no mention of their nationality. It therefore applies also to the *ressortissants* of the belligerent State returning to their fatherland to perform their military duty.

ARTICLE 7

A neutral State is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

The principle enunciated in this article is justified in itself, independently of the reasons of a practical kind in its favor. Theoretically, at least, neutral States and their populations are not to suffer from the consequences of a war in which they do not participate. Therefore the duties imposed on them by the war and the restrictions placed on their liberty of action should be reduced to the minimum of what is strictly necessary. There is no reason for prohibiting or interfering with the commerce of a neutral State even in regard to the articles mentioned in the text of the article above. Any obligation in this matter laid upon the neutral State would cause the greatest difficulties in actual practice, and would create inadmissible interference with commerce.

Article 3¹ of the French project, corresponding to the Article 7 under discussion, mentions only the export, by the subjects of the neutral State, of arms, munitions of war, etc. It was on the motion of the Belgian delegation,² [56] supported by the French delegation, that the Commission adopted the more general text, embracing the transport as well as the export and making no mention of the nationality of the merchants interested, which is, indeed, quite beside the question.

Needless to say, the provision proposed applies only to the neutral State and intends in no way to declare commerce in the articles referred to non-contraband as far as the belligerents are concerned. This commerce will be carried on by those interested at their own risk and peril, and it will be the part of the belligerents to take all the measures they may consider necessary in this respect, within the limits of international agreement or the recognized principles of the law of nations.

ARTICLE 8

A neutral State is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

Mention of this Article has already been made in the commentary on Article 3. We are here dealing with cables or apparatus belonging either to a neutral

¹ Annex 24.

² Annex 30

State or to a company or individuals, the operation of which, for the transmission of news, has the character of a public service. There is no reason to compel the neutral State to restrict or prohibit the use by the belligerents of these means of communication. Were it otherwise, objections of a practical kind would be encountered, arising out of the considerable difficulties in exercising control, not to mention the confidential character of telegraphic correspondence and the rapidity necessary to this service.

Through his Excellency Lord REAY, the British delegation requested that it be specified that "the liberty of a neutral State to transmit messages, by means of its telegraph lines on land, its submarine cables or its wireless apparatus, does not imply that it has any right to use them or permit their use in order to render manifest assistance to one of the belligerents."

The justice of the idea thus stated was so great as to receive the unanimous approval of the Commission.

ARTICLE 9

Every measure of restriction or prohibition taken by the neutral State in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

A neutral State must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

While declaring that a neutral State does not have to forbid or restrict either the commercial operations referred to in Article 7, or the use of the cables or apparatus mentioned in Article 8, the project does not, needless to say, detract from the right of said neutral State to take, on its own account, such restrictive or prohibitive measures in these matters as it may deem necessary or useful. Its liberty in this respect remains entire, with but one condition, namely, that the measures so taken be applied impartially to the belligerents. The additional article proposed by the German delegation,¹ corresponding to Articles 8 and 9 of the project, contained this condition, but only as regards the restrictions or prohibitions relative to the employment of cables or apparatus used in [57] transmitting messages. But similar measures might very well be taken by a neutral State with regard to the commerce spoken of in Article 7, and they too should, in such cases, be impartially applied to the belligerent parties. Therefore the Commission thought it advisable to give to this rule of impartiality the general scope found in Article 9.

The German proposition just mentioned was explained in the following terms by his Excellency Baron MARSCHALL VON BIEBERSTEIN, the first delegate of Germany:

One single proviso ought to be made to the principle that neutral States are at liberty to regulate the use of their telegraph systems by belligerents. The duty of impartiality inherent in the notion of neutrality imposes an absolute requirement upon them to preserve perfect equality of treatment towards the belligerents. Any restrictions that a neutral State may deem it expedient to impose on the freedom of the telegraphic communications of one of the parties should therefore be similarly applied to the correspondence of the other belligerent.

It is well understood that the rules which we are proposing are to apply equally to States where the operation of the telegraph lines forms a branch

¹ Annex 29.

of the public administration and to those where it is left to companies or to private persons. In the former it devolves upon the Government itself to perform the duties incumbent upon it; in the latter the State would be responsible for the acts of the companies or individuals and would have to prevent any violation of neutrality on their part.

Through his Excellency Lord REAY the British delegation, while admitting the first paragraph of Article 9, made express reservation to the second, which it opposed. The majority of the Commission concurred in the opinion expressed by the German delegation. It seemed to the majority that in a service like the transmission of messages by means of ordinary or wireless telegraphy, or telephone, the neutral State not only ought itself to maintain impartiality as between the belligerents, but it ought also to take such action that its example would be followed by the companies or private owners of telegraph or telephone lines or wireless apparatus.

ARTICLE 10

A neutral State which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral State.

The French project,¹ from which the first paragraph of this article is taken, said only: "Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free."

While accepting this principle, the Commission completed the text in the following respects:

(1) The expression "prisoners of war" is intended to exclude from the benefits of Article 10 individuals wanted for a breach of common law and falling within the terms of provisions of a treaty of extradition.

(2) In the second place, the Commission, by adopting an amendment moved by the British delegation,² expanded the first paragraph of Article 10 to [58] include not only prisoners that escaped from the territory of the belligerent who held them, but also those that escaped from enemy territory occupied by the said belligerent. The simplified wording, which the Commission has taken from the Belgian amendment,³ includes both these classes without distinction.

(3) In the Commission, the Swiss delegation had expressed fear that the absolute terms of the French proposition might have the appearance, at least, of creating in favor of the fugitives a formal right to enter the territory of a neutral State and remain there at liberty. It asked⁴ that the right be reserved to the neutral State, either to exclude them or to deny them a longer sojourn as soon as it considered it proper to do so. It hastened to add that, in its opinion, a neutral State would not, in general, fail to welcome prisoners of war taking refuge in its territory, and that the suggested reservation only referred to the exceptional cases where the neutral State might be forced by circumstances to allow sentiments of humanity to be outweighed by legitimate considerations of its police or of some other kind.

The Commission considered that this reservation could be accepted as a

¹ Annex 24.

² Annex 25.

³ Annex 30.

⁴ Annex 26.

matter of course, and it is very clearly expressed by the second sentence of the first paragraph under consideration.

(4) This second sentence was inserted in Article 10 at the instance of the Belgian delegation.¹ Their proposal was modified, however, in one respect.

The Belgian amendment was worded as follows:

A neutral State which receives prisoners, escaped or brought by troops taking refuge in its territory, *may leave them at liberty or assign them a place of residence.*

The French delegation, through Mr. LOUIS RENAULT, pointed out to the Commission that to assign a place of residence to a fugitive amounted in reality to subjecting him to internment, for which there is no justification. Moreover, the option allowed the neutral State might be dangerous, from the point of view of its duty of strict impartiality towards the belligerents, and might expose it to recriminations that it would be better to avoid.

In reply to these objections his Excellency Mr. VAN DEN HEUVEL insisted that there was no intention to claim for the neutral State an arbitrary latitude of judgment such as had just been properly criticized, and that the Belgian proposition was only intended to reserve to that State the right of taking such action that certain special circumstances might make necessary, as, for instance, a considerable number of fugitives. Moreover, does not the right of the neutral State to decline to receive or to allow these individuals to remain on its territory, imply of itself a right to subordinate the hospitality that it consents to grant them to some condition such as an assignment of a place of residence, especially since the fugitives always are free to decline it.

In order to cover these various observations the Commission substituted for the option of the neutral State as proposed in the Belgian motion a simple exception, the wording of which indicates that the assignment of a place of residence will be only an exceptional measure.

(5) The second paragraph of Article 10 deals with a question that the Brussels Conference discussed without solution, and that the Regulations of 1899 also left unanswered. Ought prisoners of war brought into the territory [59] of a neutral State by belligerent troops who take refuge there, to become free, or should they be interned like the troops? Upon the motion of the Netherland delegation² the Commission declared for the first solution. The only obstacle to the freedom of the prisoners here referred to lies in the actual power that the belligerent forces which captured them are exercising over them, and this actual power vanishes the moment the captor takes refuge in the territory of a neutral State.

Moreover, troops taking this extreme step, do so in order to escape from an enemy who is pressing them, and from a capitulation whose effect would of course be to free the prisoners in their power.

The Russian delegation had at first contested paragraph 2 of Article 10, and made a reserve thereto. Nevertheless, it subsequently declared that for the sake of harmony it would withdraw this reserve and would adhere to the project in its entirety, without, however, admitting that the principle accepted by the Commission is theoretically well founded.

¹ Annex 30.

² Annex 27.

Is the solution of the question as contained in the second paragraph of Article 10 inconsistent with the requirements either of Article 59 of the Regulations of 1899, or of Article 15 of the Convention adopted by the Conference on July 20, 1907, which makes applicable to naval warfare the principles of the new Convention of Geneva of July 6, 1906? This question came up in the Commission. It should be answered, without contradiction, in the negative.

What Article 59 of the Regulations of 1899 refers to is the sending into neutral territory of wounded or sick belonging to belligerent forces. The sanitary establishments of the belligerents will have recourse to this measure to rid themselves of the sick and wounded that are an incumbrance to them and thus to recover the mobility necessary to the accomplishment of their task. Such a procedure has been permitted for reasons of humanity, but it should not serve later on as a further advantage for the belligerent to whom the wounded or sick that are sent into neutral territory belong, and that is why the neutral State was obligated by Article 59 to keep them, from whichever side they come, and to prevent their returning to their own army.

The same situation occurs under the hypothesis of Article 15 of the Convention adopted July 20, 1907. A vessel carrying sick, wounded or shipwrecked men should be able to dispose of them as soon as possible, in order to return to its naval duty. Therefore, it will often be led to disembark them in the nearest neutral port. Higher humanitarian interests require that this procedure be authorized, and, as a general rule, a neutral State will not evade this duty of welcoming the unfortunates thus entrusted to it. But, if it receives them, will, in the absence of an arrangement to the contrary with the belligerent States, have to keep them in such a way that they cannot again take part in the operations of the war.

There is thus a plain distinction between the two examples that have just been explained and the situation, provided for in paragraph 2 of Article 10 of the project, of an army constrained to seek refuge in neutral territory in order to escape pursuit by the enemy. An analogous situation would be that of a vessel retiring into a neutral port to escape the enemy and disembarking its prisoners of war during its disarmament or even before the disarmament. In this case also the principle of the second paragraph of Article 10 is applicable; prisoners landed in a neutral port, except in the case mentioned in Article 15 of the Convention adopted July 20, 1907, become free from the moment they touch the soil of the neutral State.

What becomes of the war material captured by troops and brought with them into the territory of a neutral State? This question was put by the [60] Dutch delegation,¹ which made the following motion: "War *matériel* which an armed force captured from the enemy and which it takes with it when taking refuge in neutral territory shall be restored by the Government of such territory to the State from which it was captured after the conclusion of peace." But the Netherland delegation did not insist on its motion in the face of the objection made to it. On the one hand, the case of war *matériel* captured from the enemy cannot be assimilated to the case of prisoners of war. The capture of *matériel* creates for the captor an immediate right of ownership, which places this *matériel* on the same footing as the captor's own *matériel*. On the other hand, even if the captor's right to the property should become uncertain, owing to his

¹ Annex 27.

taking refuge in the neutral territory, there would be no reason for making the neutral State the judge of the question and for imposing on it the invidious duty of examining the *matériel* brought into its territory by a belligerent force to see what has been taken from the enemy and what belongs to the force under some other title.

ARTICLE 11

The fact of a neutral State resisting, even by force, attempts to violate its neutrality cannot be regarded as an act of hostility.

This article repeats, with a verbal change, an amendment proposed by the Dutch delegation,¹ and explained in the following language of his Excellency General Jonkheer DEN BEER POORTUGAEL:

It is unfortunate enough that a neutral State should be obliged to resort to armed force to secure respect for its rights and especially to perform its duties, without having such a measure regarded as a hostile act. A neutral State will never have recourse to this necessary step unless positively forced thereto by the belligerents. No imputation of having committed a hostile act can be laid to it, since the responsibility for the action taken does not rest with it.

In the Commission it was remarked that the Netherland proposition seems superfluous. "It is clear," said his Excellency Mr. VAN DEN HEUVEL, "that if a neutral State has rights and duties to fulfill it ought to have means of carrying them out. Therefore, if it employs those means no one can regard it as a grievance." On the other hand, Colonel BOREL claimed that a State whose neutrality has been violated has the right of treating this violation as a *casus belli* and of attaching thereto such consequences as it deems proper.

Without denying the correctness of these observations, the Commission agreed that the Netherland proposition had its justification in the case where the neutral State would prefer to limit itself to resisting the attempt to violate its neutrality, and to presenting in addition its grievances, through the diplomatic channel. In such a case it is not inadvisable to say plainly, as does Article 11, that the use of force by the neutral State with the sole object of resisting an attempt to violate its neutrality cannot be invoked as a *casus belli* by the State responsible for this necessity of a recourse to this extreme measure.

Here is the place to mention the proposal of the Danish delegation² referred to us for examination by the Third Commission and drawn up as follows:

If, in order to prepare in due time for the defense of its neutrality, a neutral State mobilizes its military forces, even before receiving notice from one of the belligerents of the commencement of a war, this act shall not be considered as an unfriendly act towards either of the parties in dispute.

[61] This proposition deals with the following difficulty:

When a war is about to break out, a State which intends to remain neutral may have an interest in not waiting for the declaration and notification of the war before taking the steps necessary for enforcing respect for its neutrality in the armed conflict about to take place. In such a case it is important that it have the assurance of an international stipulation that the measures decreed by it for the accomplishment of its duty as well as for the safeguarding of its rights

¹ Annex 28.

² Annex 31.

cannot in any wise be deemed by either of the future belligerents as an unfriendly act towards it.

The Commission was unanimous in thinking that every sovereign State has the indisputable right to take, in its own territory, all measures for its defense that it considers expedient, and that the exercise of this right, which flows quite naturally from its sovereignty, can less than ever give rise to criticism or complaint when, under the circumstances, the State in question has recourse thereto for an object as legitimate as that of ensuring its neutrality, and thus of performing its duties. It seemed that, far from gaining anything by the Danish proposition, this truth could only be weakened by a stipulation that would have the appearance at least of restricting its scope to certain specified circumstances. Moreover, the point was made that it was impossible and hardly correct in the text of an international treaty like the one being prepared, to attach the official description of "neutral" to an undetermined State at a time when, war not yet having been the subject of notification, nor even declared, there are no belligerents and no neutrals, and the future attitude of each State is still theoretically uncertain so far as the others are concerned.

The foregoing statements were, upon the request of the senior delegate of Denmark, inserted by the Commission in its report, and, in taking note thereof, he admitted that they were of a nature to satisfy his Government, and he accordingly did not insist that his proposal be put to a vote as a new provision for insertion in express terms in the project.

The first subcommission of the Second Commission had referred to us for examination an amendment emanating from the Japanese delegation,¹ by the terms of which Article 57 of the Regulations of 1899 on the laws and customs of war was to be supplemented by the two new provisions following:

ARTICLE 57a

Officers or other members of the armed forces of a belligerent, interned by a neutral State, cannot be set at liberty or authorized to re-enter their country except with the consent of the adverse party and under the conditions stipulated by it.

ARTICLE 57b

A parole given to a neutral State by the persons mentioned in Article 57a shall be, in case of violation, deemed equivalent to one given to the adverse party.

Article 57, paragraph 3, of the Regulations leaves it to the neutral State to decide whether interned officers may be left at liberty on giving their parole *not to leave the neutral territory without permission*. It does not say upon what conditions a permission to leave this territory should be predicated; neither [62] does it provide any penalty for violation of the parole. Finally, it does not mention either non-commissioned officers or private soldiers. The Japanese delegation proposed to fill this gap by deciding: (1) that the interned men, without distinction of rank, cannot be liberated nor permitted to re-enter their country except with the consent of the adverse party under conditions fixed by it; (2) that the parole given in such cases to the neutral State would be equivalent to a parole given to the adverse party.

Without ignoring the merits of this proposal the Commission preferred to

¹ Annex 32

continue the existing text of the Regulations. It considered that permission given to an interned man to return temporarily to his country is something too exceptional to require regulation in express terms. There was no difficulty, moreover, in recognizing that the Japanese proposal conforms to recent precedents and contains a useful hint for a neutral State desirous of remaining entirely free from responsibility. In the name of the Japanese delegation, his Excellency Mr. KEIROKU TSUDZUKI declared himself satisfied with this statement, which, on his request, the Commission decided to insert in the present report.

It only remains for us to mention the fact that during the discussion of the French proposition concerning the rights and duties of neutral States, the Chinese delegation declared that it accepted the propositions that became Articles 4, 5 (paragraph 2), 7 and 10 (paragraph 1) of the project of the Commission, but that it reserved its vote with regard to the others.

A last word on the subject of the form that the project submitted to the Conference should assume. Without wishing to prejudge the question, which is under the jurisdiction of the General Drafting Committee, the Second Commission believes nevertheless that it can and should emphasize the fact that the project cannot be assimilated to the provisions collected in 1899 in the Regulations on the laws and customs of war on land. The principles enunciated are in no way regulations, like those provisions, addressed to the military forces of belligerents and calculated to be made the subject of instructions for the armies of the signatory Powers. It seems, rather, that a separate special arrangement, which might also contain Articles 57 to 59 inclusive of the 1899 Regulations, would be the most appropriate form to be given to the project now before the Conference.

Perhaps some will pronounce this project imperfect and incomplete. Such as it is, however, it has the merit of expressing in definite form a series of fundamental principles sanctioned by the almost unanimous consent of the nations. This will assure to neutral States the benefits of a position in which not only their duties but also their rights with regard to belligerents are clear. In the absence of any other merit, that one alone would be sufficient, it seems to us, to justify us in commending the project to the considerate examination and vote of the Conference.

[63]

Annex C.

ARRANGEMENT CONCERNING NEUTRALS IN THE
TERRITORY OF BELLIGERENTSREPORT TO THE COMMISSION ^{1 2}

MR. PRESIDENT AND GENTLEMEN: The question of neutrals embraces not only the rights and duties of neutral States as such; it comprises also another problem—that which concerns the *ressortissants* of neutral States dwelling in the territory of belligerent States, and consists in ascertaining what status it may be possible and desirable to give these persons in their relations with the belligerents.

The project presented on this subject by the German delegation³ tends, through the adoption of precise rules, to remove the uncertainty which now exists in this regard on a number of points. It is based on the idea that neutrals on the territory of belligerents should remain, as far as possible, unaffected by the war. They shall not take part in it and they shall suffer the effects of it only so far as unavoidable. Thus creating a special status for neutrals, the German project begins with a definition of a neutral and of the conditions that deprive him of this quality. A second chapter treats of the services rendered by neutrals; and a third, of the goods belonging to them in the territory of belligerents. The provisions of this last chapter have been criticized in so far as they have the effect of according to neutrals exemptions which are not shared by the nationals themselves of the country in which they live. Without anticipating here the part of the report devoted to this question, we should state that the project voted by the Commission has neither the object nor the effect of diminishing in any manner or measure whatsoever the guaranties assured to peaceful populations, even though belonging to the enemy, by the tutelary provisions of the Regulations of 1899 and those which the Second Peace Conference has just added thereto in its meeting of August 17, 1907.

The German proposals are combined in a Chapter V which would be added to the Regulations of 1899. While retaining this heading provisionally, and the numbering of the proposed articles, we had no thought of anticipating the decision of the Conference as to the definite form to be given to the project and the place to be assigned thereto in its completed work.

[64]

CHAPTER I.—*Definition of a neutral*

ARTICLE 61

All the *ressortissants* of a State which is not taking part in the war shall be considered as neutrals.

¹ This report was presented to the Second Commission by a committee of examination composed of his Excellency Mr. ASSER, President; Major General von GÜNDELL, Major General Baron GIESL von GIESLINGEN, his Excellency Mr. BEERNAERT, his Excellency Mr. VAN DEN HEUVEL, his Excellency Mr. LOU TSENG-TSIANG, his Excellency Mr. BUSTAMANTE, his Excellency Mr. BRUN, Mr. LOUIS RENAULT, his Excellency Lord REAY, Lieutenant General Sir EDMOND R. ELLES, his Excellency Mr. KEIROKU TSUDZUKI, his Excellency Mr. EYSCHEN, his Excellency Lieutenant General Jonkheer den BEER POORTUGAEL, his Excellency SAMAD KHAN, MOMTAS-ES-SALTANEH, his Excellency Mr. BELDIMAN, his Excellency Mr. CARLIN, Colonel BOREL, reporter.

² See also the reports to the Conference, vol. i, pp 150 [150] and 175 [176].

³ Annex 36.

The term "*ressortissants*" was criticized as possibly including other persons than nationals, for example, aliens domiciled in the territory of a State. The Commission believes, however, that it cannot give rise to the least ambiguity. The word "*ressortissants*" seems very clearly to refer only to persons belonging to a State by virtue of the juridical tie of nationality and it is of them that the first article precisely speaks.

With respect to individuals having a double citizenship, every State has the right to ignore the fact that any of its nationals is also a *ressortissant* of another State.

ARTICLE 62

A neutral cannot longer avail himself of his neutrality:

(a) If he commits hostile acts against a belligerent party

(b) If he commits acts in favor of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality than a *ressortissant* of the other belligerent State could be for the same act.

A neutral who does not observe his duties of neutrality thereby loses the quality of neutral and the special advantages that it assures him, but does not render himself liable for any special crime of violation of neutrality. His acts, if they are illegal, will be judged on their own merits independently of the circumstance that their perpetrator belongs to a neutral State. The neutral committing them will not be treated by the belligerent State against whom he is acting with more severity than a *ressortissant* of the enemy country would be for the same act.

As expressing this idea clearly, the Commission preferred to the German proposal,¹ which spoke of "violation of neutrality" committed by a neutral, the wording proposed by the Swiss delegation,² to which the German delegation agreed.

In the course of the discussion the Commission agreed, without opposition, to the request of the delegation of Haiti, that simple comments published in newspapers, even though unfavorable to one of the belligerent parties, should not be, by this fact alone, considered as a hostile act in the sense of Article 62a.

ARTICLE 63

The following acts shall not be considered as committed in favor of one of the belligerent parties in the sense of Article 62, letter b:

(a) Supplies furnished or loans made to one of the belligerent parties, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from one of these territories;

(b) Services rendered in matters of police or civil administration.

[65] The exception provided for by Article 63, paragraph a, cannot be extended to all supplies furnished and to all loans made by a neutral to one of the belligerents. Thus, in case of a war between State A and State B, if a neutral residing in A or the territory occupied by that State were to furnish supplies to B, or subscribe to a loan issued by that State, he would by so doing commit an act in

¹ Annex 36.

² Annex 38.

favor of B, falling under the application of Article 62, paragraph *b*, and he would lose in A's eyes his quality as a neutral as a result of the sale or loan. It would be the same if the neutral, without being resident in A or in territory occupied by that State, were to deliver to B supplies coming from A or from the territory that State occupies.

As has been observed, it belongs to each belligerent to take the measures that he deems necessary against these operations which may, in respect to him, constitute an act of treason. This question is left out of the project which mentions the acts of which we speak here only to indicate under what conditions a neutral loses this quality.

CHAPTER II.—*Services rendered by neutrals*

ARTICLE 64

Belligerent parties shall not require of neutrals services directly connected with the war.

Exception is made of sanitary services or sanitary police service absolutely demanded by the circumstances. These services shall, as far as possible, be paid for in cash; if not, a receipt shall be given and payment effected as soon as possible.

Articles 64 to 66 of the German project were calculated to establish a distinction between war services and services not considered as such.

As to the former, Article 64 prohibited belligerents both from requiring and accepting them from neutrals, and Article 65 imposed on neutral States the obligation of forbidding their *ressortissants* to enter the ranks of one of the belligerent parties. The other services, on the contrary, which are not considered as services of war, could, by the terms of Article 66, be accepted but not required from neutrals with the one exception about which we shall speak presently.

In the Commission several delegations opposed the German proposals as to services freely offered or consented to by neutrals.

There is no reason, it was said, to prevent neutrals from taking service with a belligerent, and it would be inadmissible to forbid the latter to accept services so offered. Still less should an attempt be made to impose upon a neutral State a duty to forbid its citizens taking service in the ranks of a belligerent. A measure of this kind is not one of the duties of a neutral State. These duties, as his Excellency Mr. LÉON BOURGEOIS remarked, may be summed up as an obligation not to act. It could not be carried out when the neutrals live, not in the territory of their own country, but in that of one or the other of the belligerent parties.

In view of these objections the German delegation withdrew its proposals in so far as they concerned voluntary services on the part of neutrals.

This action had the following results:

- (1) That Article 65 of the German project regarding the neutral State is abandoned as no longer having any object;
- [66] (2) That as no difference any longer existed between war services and services not so considered, this distinction could be omitted and Articles 64 and 66 of the German proposition could be combined into a single text—that of Article 64 of the present project.

This article is intended to apply only to services directly connected with the war and is limited to saying that a belligerent cannot require them of neutrals;

that is to say, impose them on persons against their will. Exception is made, however, of sanitary services or sanitary police service absolutely demanded by circumstances. This means exceptional assistance that ought to be required by reason of the very necessity which demands them. The Commission thought it superfluous to add in the last paragraph of Article 64, as was proposed by the delegation of Austria-Hungary,¹ "services of a religious nature and services rendered in the interest of internal order." In short, the character of these services is too exclusively humanitarian or of general utility for them to be considered as directly connected with war. They therefore do not fall within the first paragraph of Article 64.

ARTICLE 65

The provision of Article 64, paragraph 1, does not apply to persons belonging to the army of a State through voluntary enlistment.

In the course of the discussion of the German proposals² two special reserves were made with respect to the provision now appearing as Article 64, paragraph 1, of our project:

(1) Without opposing the principle of this article the Netherland delegation³ made the point that it could not be applied to persons belonging to the army of a State by virtue of a voluntary enlistment previous to the war. The nationality of these persons is not a reason for exempting them from the performance of the very military duty for which their services were offered and accepted in the terms of a voluntary and valid contract. The Commission recognized the truth of this observation and has covered the case in Article 65 of its project.

(2) The other reserve had reference to the legislation of some States which require military service of foreigners domiciled in their territory, doing so either as a general rule or only in the case of those foreigners who do not prove that they have performed their military duty in their own country.

Not wishing to trespass on the domain of national domestic legislation, the committee of examination considered it preferable not to devote an express exception to this case, as it might, in appearance at least, have the character of official recognition.

CHAPTER III.—*The property of neutrals*

ARTICLE 66

No war tax shall be levied upon neutrals

A war tax is deemed to be any tax levied expressly for war purposes

[67] Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.

It is here that there arose the strongest objections to the German project, especially by the delegations of France, Great Britain and Belgium. It is inadmissible, they said, to create for neutrals an advantageous status that finds no sound basis either from the point of view of the State in which they dwell or of the other belligerent party. Exempt from military service by reason of his foreign

¹ Annex 37.

² Annex 36.

³ Annex 42.

citizenship, a neutral established abroad is subject to all other charges that are levied from the citizens of the country where he has his domicile. The State whose hospitality has been extended to him is the less called upon to make a distinction in his favor since the charges from which it is desired to relieve him have most often the character of general taxes affecting the entire population and whose collection does not lend itself to distinction of persons. As to the position of neutrals with regard to an invader who occupies the territory where they live, that is already regulated by the provisions of the Convention of 1899 on the laws and customs of war on land—a Convention that makes no distinction between neutrals and the nationals of the invaded State and, as a consequence, places them all on the same footing. Besides, how could the neutral complain? Does he not by coming to establish himself in a country consent in advance to submit to its laws and taxes and to share in this respect the lot of the citizens in whose midst he lives?

Finally, the German proposition would encounter in practice very great difficulties of execution. Thus, to repeat the expression of his Excellency Mr. Léon BOURGEOIS, the war taxes referred to in Article 66 can hardly be imposed and collected except *ratione loci* and not *ratione personae*, whether the invader collects them himself or whether he has the local authority do so.

Besides these general objections an additional point was made of the peculiar difficulties that the application of the provisions of the German project could not fail to encounter in certain countries as to the points under discussion. "Every English colony," said the British delegation, "has a very considerable population of foreigners who have dwelt there for a long time, most of them having been born there. They consider it as their own country, although they have not formally renounced their old nationality, and they have no desire whatever to benefit by the exemptions that are here proposed to be granted them." Likewise, the Japanese delegation made the point that in the Far East a number of countries have not legislated on the subject of nationality and that entire populations may be found there whose citizenship is quite uncertain or might be changed at any moment by decisions too interested to be acceptable.

On the other hand, arguments in support of the German proposition were presented, particularly by the delegations of the United States and Switzerland. These we shall now briefly summarize.

The sole and immediate object of the project is not to favor foreigners against the native population of the country where they live. It is inspired by that more general and even loftier influence that guides the work of the Conference and aims to minimize, so far as possible, the evil effects of war and to diminish, so far as circumstances permit, the number of persons called upon to suffer its hardships and burdens. It is impossible to deal here with the citizens of the belligerent States. It is to them that their own country makes its appeal to sustain its efforts in the war; it is to them that the invading enemy addresses his requisitions as authorized by the Regulations of 1899. But side by side with [68] these populations, necessarily involved in the struggle, are foreigners, found in the territory of a belligerent State only because of the fact of their domicile, who have no bond with this State and who are neutrals because their own country is a neutral to the conflict. If it is truly desired to continue faithful to the humanitarian movement which has already inspired a number of the provisions of the Articles of 1899 and which aims to lessen the evils of war and the number

of its victims, must we not act accordingly in behalf of these neutrals for whom the struggle is a thing apart and who have neither share nor responsibility in it? Can we ignore, in this matter, the difference that the very tie of nationality creates between them and the citizens of the country in which they live, a tie which does not exist for them, or, to be more exact, which binds them to a foreign and neutral State? And if it be urged that it is scarcely fair that foreigners in a State should, in case of war, be treated better than the citizens, can this feeling, which is more human than just on the whole, cause us to forget that the citizens of this same State, when abroad, would enjoy the benefits of the proposed plan in the far more numerous wars to which their country will be not a party, but a neutral? As to the difficulties of execution indicated, they can scarcely be considered as insurmountable. It is for those interested individuals to prove their nationality; and it will not be necessary to recognize as neutrals persons not furnishing this proof in an entirely satisfactory manner.

These considerations had led to the adoption by the committee of examination by a vote of 6 to 5, with 1 abstention,¹ of the proposal to establish in favor of neutrals the rules laid down in Articles 66 to 68 of the project. As to Article 66 it will suffice to observe again that it does not deal with ordinary taxes, even though increased in time of war.

ARTICLE 67

The property of neutrals shall not be destroyed, damaged or seized, unless absolutely necessary by reason of the exigencies of the war. In case of destruction or damage, the belligerent is only bound to pay an indemnity in its own country or in the enemy country, when the *ressortissants* of another neutral country or of its own are likewise given the benefit of an indemnity and reciprocity is guaranteed.

While providing for the case of an indemnity Article 67 does not impose upon the belligerents the obligation to repair the damage in the cases in point. Each State remains free to recognize or not this obligation and to put it into execution either in a general way or according to circumstances.

What the project demands of them is that in each case the neutrals be treated on a footing of equality among themselves or with the nationals in consideration of guaranteed reciprocity. Supposing that in such and such a case the belligerent State decides to indemnify the national or neutral owners of real property destroyed by necessity of war, he will not be able to indemnify either the nationals alone or the *ressortissants* of the neutral State A without being under the necessity of according the same treatment to the *ressortissants* of the neutral State B whose Government guarantees reciprocity.

To this system, which, in short, makes everything depend upon the good-will of the responsible belligerent, the Swiss delegation would have preferred a [69] general stipulation by which the States would bind themselves to indemnify entirely the owners in the cases provided for in the first sentence of Article 67. It made a proposal to that effect and called attention to the fact that while being inspired by the generous and humanitarian tendencies of which we have already spoken, this solution would have the practical merit of insuring in itself reciprocity between all the contracting States and of exempting the injured

¹ Voting for Article 66: Germany, United States of America, Austria-Hungary, Cuba, Luxemburg, Switzerland.

Voting against this article: France, Great Britain, Japan, Netherlands, Persia.
Not voting: Denmark.

owners from furnishing a proof which they might at times have some difficulty in producing. But, without ignoring the value of these arguments, the Commission had to state that the Swiss proposal gave rise to the most serious objections by reason of the financial consequences which might arise from it; and this proposal was withdrawn for lack of support.

The prohibition against seizing neutral property is conformable to the ruling of Article 23, letter *g*, of the 1899 Regulations. It is well to state in this respect that in case of seizure indemnity is a matter of right and does not depend, as in the case of destruction or of deterioration, on the good-will of the responsible belligerent. The following articles of the project regulate the payment of indemnities in the case where, as an exception, the seizure is permitted.

ARTICLE 68

The belligerent parties shall make compensation for the use of real property belonging to neutrals in the enemy country, the same as in its own country, provided that reciprocity is guaranteed in the neutral State. Nevertheless, this indemnity shall in no case exceed that which the legislation of the enemy country provides in case of war.

Article 68 refers to the single case of the utilization by a belligerent of real property belonging to a neutral on the enemy territory. The expropriation or utilization of real property on the territory of the State itself which resorts to this measure, is still regulated in time of peace as in time of war by the legislation of that State. As to the expropriation by a belligerent of real property in enemy country, that is a case which it is useless to consider for the simple reason that it will never occur. The necessities of war may lead a belligerent to utilize, even to destroy, real property; but one searches in vain for any reason and purpose for which it might wish to acquire the property.

ARTICLE 69

Movable property belonging to a neutral in the territory of a belligerent party can be expropriated or made use of by it for a military purpose only by an immediate payment of an indemnity in specie.

Article 69,¹ differing therein from the preceding article, refers to and regulates exclusively the expropriation or utilization by a belligerent State of movable property belonging to neutrals on its own territory. It lays down the general and absolute principle that this expropriation or utilization can take place only in consideration of an immediate payment of an indemnity in specie. In the German proposition the second paragraph of Article 70, which became Article 69 of the project, provided for the application of the same principle in enemy country within the limits and under the conditions stipulated in Article 52 of the Regulations of 1899. The German delegation renounced this paragraph because the question is already regulated by Articles 52 and 53 of the Regulations, [70] which, in its opinion, are as applicable to the property of neutrals as to that of *ressortissants* of the enemy State.

This same question had arisen in the first subcommission and had been referred by it to the examination of the second subcommission of the Second Commission. We had to acknowledge that in effect the Regulations of 1899 had established no difference between the two categories of owners and, consequently, of

¹ This article was adopted in the committee of examination by nine votes to five.

property of which we have just spoken. As for making a difference here relative to the neutrals, that would have been useless since Article 52 of the Regulations amended by the Conference August 17, 1907, carries the provision, in favor of all owners, that: "Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, *and payment shall be arranged as soon as possible.*"

Let us observe, finally, that Article 69 is not applicable to railway material or to vessels, which are regulated by the special provisions of Articles 70 and 71.

ARTICLE 70

Railway material belonging to neutral States or to companies or to private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to its country of origin.

A neutral State may likewise, in case of necessity, retain and utilize to an equal extent material of the belligerent Power found on its territory.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

With reference to Article 70 of the German proposal,¹ which in part became Article 69 of the project, the delegation of Luxemburg² had proposed an amendment as follows: "This authorization [to expropriate or make use of, for military purpose, movable or real property of neutrals in the country of the belligerent who requires them] does not extend to means of public transportation leading from neutral States, and belonging to said States or to their grantees, recognizable as such."

Before this proposition came up for discussion the delegation of Luxemburg followed it with a subsidiary amendment³ to complete the same Article 70 by the following provisions:

The maintenance of pacific relations, especially of commercial and industrial relations, existing between the inhabitants of belligerent and neutral States, merits particular protection on the part of the civil and military authorities.

On the outbreak of hostilities, belligerents shall accord a sufficient delay to enable transportation material belonging to neutral States or to their grantees to be taken back to their country of origin.

Requisitions on means of transportation belonging to neutral States or to their grantees shall not be made except in case of imperative necessity.

The quantity of material to be requisitioned, as well as its use, shall be reduced to a minimum. Such material shall be returned within a short time to its country of origin.

Whenever public transportation material belonging to a neutral State or to its grantees is requisitioned by a belligerent State, material belonging to the latter or to its grantees found in neutral territory may likewise be held there by way of due compensation.

[71] The minutes of the sixth and seventh meetings of the second subcommission show in detail the very interesting discussion to which the propositions of the delegation of Luxemburg gave rise.

¹ Annex 36.

² Annex 39.

³ Annex 40.

We may be permitted therefore to confine ourselves here to the following observations:

(1) The principle enunciated by the first paragraph of the above subsidiary amendment received unanimous consent; but the Commission thought that a better form for it would be that of a general resolution to be inscribed as a preamble at the head of the new contractual provisions concerning neutrals. If the Conference concurs in this view, it will be the duty of the General Drafting Committee to give the proposed resolution the place and wording that are most suitable.

(2) In the course of the discussion the Commission agreed at once that in regard to neutral railroad material in occupied territory, the question is regulated by Article 54 of the Regulations of 1899, which contains the provision that "The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible." The report of the subcommission¹ which prepared the Regulations of 1899, gives this article the following comment:

His Excellency Mr. BEERNAERT *had suggested ordering immediate restitution of this material* [that is to say, the material contemplated by Article 54] *with a prohibition of using it for the needs of the war*; but the subcommission agreed with the drafting committee in thinking that it was sufficient to lay down the principle of restitution within a short time for the sole purpose of pointing out that the material belonging to neutrals *cannot be the object of seizure*.

Did the authors of the Regulations of 1899 by these last words intend to formulate a general principle prohibiting belligerents from requisitioning railway material belonging to neutrals? So his Excellency Mr. VAN DEN HEUVEL maintained, but the majority of the Commission took the opposite view as expressed by Mr. LOUIS RENAULT and others.

Article 54 does not absolutely forbid a belligerent to utilize the material of neutrals found in the territory occupied by its army. It is limited to imposing upon him the obligation to send back this material as soon as possible to the rightful possessor.

(3) On the question of principle raised by the Luxemburg amendments various opinions came to light in the Commission and its committee of examination. Some delegations utterly denied that a belligerent has a right of requisitioning and utilizing neutral material found in its territory. Among those who admitted this right within the limits of Article 70, some claimed in favor of the neutral State an indemnity as well as the right of retaining, to an equal extent, material belonging to the belligerent. Others were willing to grant to the neutral State only the indemnity without the right of retaining material, or only this right of retention to the exclusion of any indemnity.

It is impossible to reconcile these various opinions, which are contradictory on more than one point. The project contains what may be called an intermediate solution. The first paragraph of Article 70, which the German delegation proposed in order to take into account the amendments presented by the delegation of Luxemburg, does not deny the belligerents the right of requisitioning and utilizing material belonging to neutral States or their grantees, but it restricts it to the cases where such a step is demanded by an imperative necessity.

¹ Report of Mr. EDOUARD ROLIN JAEQUEMYS, annex to the fourth meeting of the second commission.

[72] For example, when mobilization takes place, it would be literally impossible to proceed to a separation of all the railway material belonging to neutral States or their grantees. Even were it thus set apart, this material could nevertheless not be sent to its country of origin as long as the military transportation superseded and checked all other schedules. This situation of *force majeure* might occur even before the opening of hostilities. It could also arise when States are mobilizing their forces with the aim of enforcing respect for their neutrality during a war that has already been declared or one that is imminent.

All that can be done here is to restrict the right of requisition to the narrow limits stated in Article 70, paragraph 1, and to recognize the right of the neutral State to the retention reserved to it in the second paragraph of the same article. This right could not be considered as having the character of reprisals. The neutral State will have recourse to it because, deprived of the material retained by the belligerent, it, in its turn, has to requisition the material that it finds in its territory to ensure its domestic as well as its international railroad service. It will exercise this right only to the same extent and will be careful, by preserving an even balance between the belligerents, to observe its duty of impartiality which is too inherent in neutrality to require the express mention proposed by the Serbian delegation.¹ Finally, the project imposes on the State making use of the right of requisition, the obligation to pay to the rightful possessors of the material an indemnity proportionate to the material utilized and to the time it is held. In this provision the project merely sanctions a principle which is already practised everywhere in times of peace and whose application cannot, it seems, cause any difficulty.

ARTICLE 71

Neutral vessels and their cargo can be expropriated or utilized by a belligerent party if they belong to the river shipping in its territory or in the enemy's territory. Exception is made of the vessels in a regular maritime service.

In case of expropriation the indemnity shall be equal to the full value of the vessel or cargo, increased by 10 per cent. In case of use it shall be the ordinary freight charge increased by 10 per cent. These indemnities shall be paid immediately and in specie.

Two principles are laid down in Article 71, which regulates also lake shipping, but not that of a seaport.

The first of these is that the belligerents may, under the conditions fixed by paragraph 2, expropriate or utilize neutral vessels belonging to the river shipping in their territory or in that of the enemy. The second is that this right does not belong to them as regards vessels, even if found on a river, whose regular service is maritime and not river. In either case the cargo is subject to the same rules as the vessel itself.

ARTICLE 72

When movable property belonging to neutrals and utilized under the provisions of Articles 68 to 71 shall have suffered, by the sole reason of their use for a military purpose, any damage in excess of ordinary wear and tear, the belligerent party shall pay for this damage a special indemnity over and above what is due for utilizing them.

The total indemnity for goods destroyed under the same conditions shall be the same as that which would have been paid for the expropriation of these goods.

¹ Annex 41.

It is not sufficient to provide for a bailment indemnity in favor of the owners of neutral goods utilized by a belligerent in the cases dealt with in Articles [73] 69 and 71. A further indemnity will be due if these goods are damaged by the use made of them. In case of destruction by reason of this use, the indemnity will be that which would have been paid for an expropriation of the goods destroyed.

In stating the right to this special indemnity, Article 72 expressly subordinates it to the condition that the goods to which it applies shall have been destroyed or damaged solely by the use made of them for a military purpose.

With regard to Articles 71 and 72, the delegations of France, Japan and Great Britain expressly renewed the reservations already mentioned in the course of the present report. The first two repeated that they were opposed to everything in the report which tends to create for the neutrals an advantageous status as against the nationals of the belligerent parties.

The British delegation added that it rejected, moreover, the obligation imposed upon belligerents to pay indemnities to neutrals outside of the cases already regulated by the Convention of 1899 on the laws and customs of war.

These reservations were recorded and it should be stated that several delegations thought it their duty to refuse their complete adhesion to the project resulting from the work of the Commission. But we believe, nevertheless, that we are justified in presenting this project to the Conference and in recommending its adoption, because it marks one more step along the way which, although it cannot lead to the suppression of war, at least tends to restrict its evil effects and to lessen the number of its victims.

[74]

FOURTH MEETING

SEPTEMBER 2, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 10:45 o'clock.

The President: The order of the day calls for the continuation of the examination of Colonel BOREL's second report which deals with the question of neutrals in their relations with belligerents.¹ The discussion relative to Chapter I of the draft regulations submitted to us by the committee of examination of the second subcommission² has been brought to a close except in so far as it concerns Article 62, on the subject of which reservations were made by the Russian delegation in the course of the meeting of August 30. Before beginning the examination of Articles 64 and 65 of Chapters I and II, it will be preferable to complete the discussion of Article 62 if the Russian delegation is prepared to give us the explanations promised by his Excellency Mr. TCHARYKOW.

Lieutenant General Sir **Edmond R. Elles** first asks permission to submit to the Commission an observation on the subject of the arrangement concerning the rights and duties of neutral States on land, which was discussed in the last meeting. As stated in the minutes (vol. iii, pp. 32-3 [35]), the British delegation made reservations to Article 3 after having voted against the amendment to paragraph *b* of this article proposed by the delegation of Russia, the significance of this amendment having appeared to it slightly equivocal. The British delegation thinks that it would be preferable to refer to the text of Article 1 of the radio-telegraphic convention of 1906 and, following its wording, to replace the words: *closed to public service* by the words: *which has not been opened for the service of public messages*. It hopes that the amendment in this form will be acceptable to the Russian delegation and to the Commission for the sake of avoiding misunderstandings and of obtaining harmony on this point.

Major General **Yermolow** declares that he accepts, in the name of the Russian delegation, the wording proposed by General ELLES.

[75] His Excellency Mr. **Keiroke Tsudzuki** likewise agrees to the wording proposed by the British delegation and accepted by his Excellency Mr. TCHARYKOW.

The Reporter is of opinion that as far as can be judged from the reading of this new wording, there would appear to be only an advantage gained by its adoption.

¹ Annex C.

² Annex 44.

After reading it, the **President** declares that no objections are raised to its adoption.

Lieutenant General Sir **Edmond R. Elles** thanks the Russian delegation for its spirit of conciliation and declares that under these conditions the British delegation withdraws all of its reservations and accepts the project in full without any reservations.

The **President** is pleased with this solution and remarks "that is a result which must be commended." (*Hearty applause.*)

The Commission proceeds to the examination of the second report of Colonel **BOREL**, and Major General **Yermolow** speaks as follows on Article 62:

MR. PRESIDENT AND GENTLEMEN: With respect to the draft regulations on the treatment of neutral persons in the territory of belligerent parties, as proposed by our committee of examination, the delegation of Russia has the honor to present the following views and general considerations:

We are of the opinion that the fundamental principle, so just and so irrefutable, that affirms that the subjects of a neutral State must never be considered in the light of enemies, whatever may be the place of their domicile, was fully discussed, accepted and established by the First Peace Conference. In Chapter I of the Regulations of 1899 are clearly defined the persons who are to be considered and treated as enemies.

It follows logically that all persons not covered by this fundamental definition, peaceful individuals, non-combatants, no matter to what State they may belong, cannot be included under the term "enemies." They are designated in general in the Regulations of 1899 as "inhabitants" and they are there already guaranteed, fully and without distinction of nationality, the protection of an equitable and uniform treatment for all. To wish to go further would mean, in our opinion, taking up again questions already settled, proving what is already proved. When an individual comes to take up his residence in a country other than his own, it is to be supposed that he comes because he gains thereby some advantage, material or otherwise, a better living perhaps, an easier or more comfortable existence. But then, if in times of peace he succeeds in finding there a happy asylum; if he shares, with the inhabitants of the foreign country, the benefits of a peaceful residence, is it not just and equitable that, in times of war, times of grave anxiety for the country which has hospitably received him, he should share the troubles of the State which has accorded him asylum and protection. If he is not of this opinion, gentlemen, he is at liberty, is he not, to go when he will. But, if we compare the new propositions of our committee of examination with the stipulations of the 1899 Regulations already in force, what do [76] we see? We see that these propositions tend to establish privileges in favor of the neutrals at the expense of the non-combatants of the two belligerents.

These propositions demand even that the nationals of a belligerent State, already suffering under the burdens of war, be sometimes further burdened, for example, in order to indemnify with an increase of ten per cent the possible losses of the neutral. We do not think this solution just nor can we admit the fundamental principle involved.

But going still further, gentlemen, I beg you to observe that the project requires, moreover, that in paying an indemnity to a neutral there should be a certain distinction made between the neutral with whom there is no reciprocity and another neutral with whom there is reciprocity. It seems to us that this new

proposition would, in principle, be a step backward in comparison with the Regulations of 1899, which establish equal treatment for all and prescribe the same consideration for every non-combatant individual, whether of belligerent or neutral nationality, provided only that he answers the description of peaceful inhabitant and non-combatant. The distinction of neutral with reciprocity and without reciprocity seems to us, by its complexity of execution, practically inapplicable.

In view of all the considerations set forth, I have the honor to declare, in the name of the Russian delegation, that we consider Chapter III of the project proposed by the committee of examination superfluous inasmuch as it repeats decisions already established by the Regulations of 1899, and unacceptable since it accords to neutrals privileges not enjoyed by the other peaceful inhabitants and non-combatants on belligerent territory.

The **Reporter** calls attention to the fact that they are confronted by two very distinct questions. The first, which treats of Article 65 and relates to the services of neutrals, has given rise to two amendments, one by Great Britain,¹ the other by Belgium.² The second and more general question, on which the delegations of Great Britain and Russia have made some observations, concerns what is called the "privileges to be accorded to neutrals." It is necessary to make a distinction. The second question must be considered in connection with Chapter III. The Commission had left off the examination of Article 65 regarding the services which might be required of neutrals. The discussion of this article would therefore need to be taken up again. As to Article 62, it could be reserved until the Commission decided on the status to be adopted for neutrals.

The **President**, with the consent of the Russian delegation, declares Article 62 reserved and proposes that they proceed to the discussion of Article 65, which he reads:

ARTICLE 65

The provision of Article 64, paragraph 1, does not apply to persons belonging to the army of a belligerent State through voluntary enlistment.

The **Reporter** explains the point of view of the committee of examination on the subject of the reservations made by two groups of delegations in regard to the military service demanded of foreigners by the legislations of some States. In his opinion the Conference is not called upon to declare itself in favor of either one or the other of the systems now before it. From one side or the other one must expect reservations worthy of the same consideration. If the text is voted as adopted by the committee of examination, the countries requiring military [77] service of all residents will exclude from their ratification the first paragraph of Article 64. If, on the other hand, the Commission inserts in Article 65 a new provision reserving the legislation of these States, then the delegations of the other Powers will expressly exclude it from their adhesion to the project in order to avoid even the appearance of recognizing the system thus reserved.

We do not have to discuss the pertinency of the reservations; they all merit equal consideration.

Under these conditions, it seems, one ought to be prompted by a purely practical consideration in adopting the text which will give rise to the fewest reservations. If the system of domicile were in force in the majority of States, the

¹ Annex 45.

² Annex 46.

British amendment, which includes the Belgian amendment, would find justification in this fact. If, on the contrary, the great majority of the States prefer the system of nationality—and such appears indeed to be the case—it would be simpler to accept the text proposed by the committee of examination; and it would then behoove the States which have the system of domicile to make a reservation on this point.

The President: The discussion appears to be exhausted and the Commission should come to a decision. The amendments of the delegations of Belgium and Great Britain are before the Commission, and the vote must be taken on the last and more extended one.

The Reporter proposes to put to a vote first the British amendment which is less restricted than the Belgian amendment and which, moreover, comprises the same provisions with a larger scope

Before putting the British amendment to a vote the **President** states that no objection has been raised to the spirit of Article 65.

Thirty-four delegations take part in the vote.

Voting for: Belgium, Brazil, Bulgaria, Denmark, Great Britain, Haiti, Japan, Norway, Paraguay, Netherlands, Persia, Turkey.

Voting against: Germany, United States of America, Austria-Hungary, Cuba, Greece, Italy, Panama, Sweden, Switzerland.

Abstaining: Chile, China, Dominican Republic, Spain, France, Luxemburg, Montenegro, Portugal, Roumania, Russia, Serbia, Siam, Venezuela.

The amendment is therefore adopted by 12 votes against 9 with 13 abstentions.

The President in making known the result of the vote remarks that it discloses wide differences of opinion in the assembly, especially as a great number of the States did not take part in it. The amendment is admitted but it may be necessary to come back to it.

The Reporter proposes a new wording for the British amendment; in his opinion a separate paragraph should be added to it in consideration of [78] the reservations already formulated and others which might be made later.

Article 65 would be thus worded:

The provision of Article 64, paragraph 1, does not apply to persons belonging to the army of a belligerent State through voluntary enlistment.

Nor does it apply to persons belonging to the army of a belligerent State under the legislation of that State.

The President states that this modification gives rise to no remarks.

His Excellency Mr. **Carlin** declares that the Swiss delegation, under these conditions, expressly reserves paragraph 2 of Article 65, and asks that this reservation be recorded.

This is complied with.

The order of the day calls for the examination of Article 66 and, consequently, of Chapter III of the committee's project, which treats of the property of neutrals.

The President asks if, in addition to the reservations already made by Major General **YERMOLOW**, anyone desires to present any general observations on the subject of this chapter. He reads Article 66.

ARTICLE 66

No war tax shall be levied upon neutrals.

A war tax is deemed to be any tax levied expressly for war purposes.

Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.

Major General **Amourel** makes the following declaration:

The French delegation has already repeatedly stated why it could not adhere to the majority of the articles in Chapter III of the committee's project, which would establish an advantageous status for neutral property. It is not alone in this opinion: other delegations have clearly manifested the same viewpoint regarding this question.

It is therefore quite possible that there may be considerable opposition to this chapter and that, even if a majority favor it, the effect of its provisions may be very much lessened by the numerous reservations which will be made to it. In the case of the non-adhering Powers the situation will remain the same as at present, and neutral property will be treated like the private property of the belligerent. That appears to us to clearly follow from the Regulations of 1899; we think, however, that we might cover it by a formal text, and we have with this idea prepared a draft amendment¹ which we have the honor to submit to you.

This project does not favor neutrals to the same extent as does the German project; but it does guarantee them the same treatment as the nationals of the belligerent, a result which will doubtless appeal to you as very worthy of consideration

[79] Lieutenant General **AMOUREL** reads the new wording proposed by the French delegation to replace Chapter III of the committee's project:

CHAPTER III.—*The property of neutrals.*

ARTICLE 66

The property of neutrals shall be dealt with by each belligerent: first, on its own territory, like the private property of its nationals; secondly, on hostile territory, like the private property of the *ressortissants* of the hostile State

ARTICLE 67

(Like Article 70 of the committee's project.)

ARTICLE 68

Neutral vessels and their cargo may be requisitioned and used on the same conditions as railway material.

ARTICLE 69

The indemnity to be paid to neutrals for destruction, requisition, damage, or use shall, as far as possible, be paid in cash; if not so paid, the amounts due shall be stated in receipts and their payment shall be effected as soon as possible

Major General **von Gündell** says that the proposed amendments seem to him to be of a nature to make an immediate discussion impossible, and asks that they be printed and distributed.

¹ Annex 47.

His Excellency **Samad Khan, Momtas-es-Saltaneh** supports the French proposition.

Mr. Louis Renault remarks that the amendment just read brings no new element into the discussion. It merely formulates a thesis which has already been maintained many times both in the committee and in the second subcommission and which has just been upheld by the Russian delegation. The proposed text is then only the expression of theories already developed and has no other object than to secure as complete accord as is possible on this question, taking into consideration all the objections which might have prevented the initial project of the committee from being adopted in its original form.

The **President** consults the assembly on the advisability of continuing the discussion now or postponing it until a future meeting.

His Excellency Count **Tornielli** considers that the amendment is too important to admit of an immediate discussion.

The **President**: In this case we have only to close the meeting. Perhaps, however, the delegation of Russia is already prepared to deliver its remarks on Article 62.

[80] Major General **Yermolow** replies that the Russian delegation, by reason of the considerations already explained, proposes to omit from the text of Article 62 the following words . . . "*and of the special privileges resulting therefrom according to the terms of Articles 64-72.*"

The **Reporter** recalls that his Excellency Lieutenant General Jonkheer **DEN BEER POORTUGAEL** has already proposed the suppression of the words "*of his neutrality*" and asked, as stated in the minutes of the meeting of August 30 (vol. iii, p. 40 [43]), that the wording of Article 62 be modified as follows: "*A neutral cannot longer avail himself of the special privileges resulting from his neutrality . . . etc.*"

An exchange of views takes place on this subject between the **Reporter** and his Excellency Lieutenant General Jonkheer **den Beer Poortugael**, who explains the bearing of his amendment.

The **President**: There is at the very least a contradiction in form between the Russian and Netherland amendments. Since we are to meet again we will take up the question in our next meeting.

The date for the next meeting is set for Wednesday, September 4, at 2:30.

The meeting adjourns at 11:25 o'clock.

[81]

FIFTH MEETING

SEPTEMBER 4, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 2:55 o'clock.

The President: The President of the Conference has the floor.

His Excellency Mr. Nelidow: GENTLEMEN: The communication which I am about to make to you relates in no way to the deliberations of the Second Commission. I have desired to profit by the presence of nearly all the first delegates to apprise you of a decision of Her Majesty the Queen of the Netherlands regarding the Palace of the Conference. As you know, the opening of the States General takes place each year in mid-September in the Hall of the Knights which has been so graciously placed at our disposal. We have therefore been somewhat concerned to know whether we could find other quarters in case our work should not be finished by that date. Her Majesty has not permitted us to take such a step and has been so good as to decide that the opening of the States General would take place in another room, to which effect I have just received a letter from the Minister for Foreign Affairs, which with your permission I will read:

Mr. AMBASSADOR: Your Excellency is not unaware that under the Constitution of the Netherlands the session of the States General convenes September 17 next. It has been the custom for Her Majesty the Queen to open the same in the Hall of the Knights in which the Second Peace Conference is holding its plenary meetings.

The Queen, my gracious Sovereign, who follows with the deepest interest the work of the Conference and desires to avoid everything which could hinder the high assembly in the accomplishment of its task, has been pleased to charge me with the duty of conveying to your Excellency the information that the necessary measures have been taken to provide for the opening of the [82] States General this year in another room, in order that the Conference may continue its work without interruption.

In communicating the foregoing to your Excellency, I am fulfilling a duty particularly agreeable to me, and I take this opportunity to reiterate the expression of my profound regard.

I have considered it my duty to express to Her Majesty the respectful gratitude of the Conference for this gracious attention which calms one of the scruples created by the unforeseen prolongation of our labors. (*Applause.*)

The President: In the name of the Second Commission, I thank his Excellency Mr. NELIDOW for the communication which he has been so good as to read

to us. The whole Conference, we are sure, will appreciate highly this new mark of sympathetic interest which Her Majesty sees fit to accord our labors.

The **PRESIDENT**: You have all received the minutes of our third and fourth meetings. Are there any objections?

As no one requests the floor, I conclude from your silence that you approve them, and they are therefore adopted.

Major General **Yermolow** reads the following declaration:

In our meeting of August 30, the Russian delegation made reservations to the second paragraph of Article 10 of the Regulations on the rights and duties of neutral States on land, in the matter of prisoners of war brought into a neutral country by troops taking refuge there. Although not sharing, from the juridical point of view, the opinions contained in the report of our committee of examination on this question, and not having been able to change its viewpoint as a result of the debates which took place thereon in this Commission, the delegation of Russia nevertheless begs to announce that it attaches to this question only a secondary military importance and is, moreover, desirous, in a full spirit of conciliation, not to hinder the almost unanimous expression of opinion obtained thereon in the vote of the Commission. I do not, therefore, insist on the reservations which I made in the name of the delegation of Russia and I have the honor to declare that the delegation accepts in full the text of Article 10 as drawn up in the regulations.

The **President** accepts Major General **YERMOLOW**'s declaration and thanks the delegation of Russia in the name of the Commission. (*Applause.*)

We have arrived, he said, almost at the end of our task, since scarcely anything more remains except the examination of Chapter III of the new section which the French delegation proposes to substitute for that of the committee.¹ As you know, this chapter is devoted to the property of neutrals and is worded as follows:

Replace Chapter III of the draft of the committee by the following:

CHAPTER III.—*The property of neutrals*

ARTICLE 66

The property of neutrals shall be dealt with by each belligerent:

1. On its own territory, like the private property of its nationals;
- [83] 2. On hostile territory, like the private property of the *ressortissants* of the hostile State.

ARTICLE 67

(Like Article 70 of the committee's draft.)

ARTICLE 68

Neutral vessels and their cargo may be requisitioned and used on the same conditions as railway material.

ARTICLE 69

The indemnity to be paid to neutrals for destruction, requisition, damage or use shall, as far as possible, be paid in cash; if not so paid, the amounts due shall be stated in receipts and their payment shall be effected as soon as possible.

¹ Annex 47.

We have still to decide, says the **PRESIDENT**, on Article 62, regarding which an amendment was proposed by the delegation of Russia without any decision having been made in the meeting of September 2 for the reason that the question depends upon the solution to be adopted for Chapter III.

It will perhaps seem advisable to have first a general discussion on the new text in connection with the old.

His Excellency Lieutenant General Jonkheer den Beer Poortugael takes the floor to offer some remarks on the subject of this chapter:

We do homage to the generous principles which have led the German delegation to offer propositions looking towards the reduction of the evils of war as far as possible and to the diminishing, as much as circumstances may permit, of the number of persons called upon to undergo its rigors and burdens.

We fear, however, that in the way indicated we may not find the right solution. In the first place we cannot reduce the evils of war in this way, and, if the number of persons upon whom the burden falls is reduced, it is only by taking the burden from some and putting it on others.

From a political point of view it makes no difference whether the articles in question are accepted or not. We have many foreigners within our borders and many of our citizens live in foreign countries. They counterbalance each other. We can therefore judge the matter in an entirely impartial way from the standpoint of justice and equity.

Why do people go to a foreign country? Some to enjoy the advantages there offered them in the way of the luxury, society, and pleasures they like. Others, to enjoy advantages to be derived from the soil, navigation, or commerce.

The foreign State offers them hospitality. They profit as much as they wish by the advantages they have sought there. In the majority of the States they are treated on a footing of equality with the nationals, being allowed to own property there. If plagues overrun a country, if it is devastated by floods or volcanic eruptions so that the State accords the inhabitants of these regions reduction of taxes, it will never make a distinction between its *ressortissants*, the word being taken in the sense of persons living under the laws of the country. The [84] State will grant this reduction without inquiring whether the inhabitants are of one nationality or of another. They are companions in misfortune, it is only just that they be succored without being asked where they were born or to what country they belong.

Suppose now instead of plagues, floods or volcanoes, another calamity arises in the shape of war, will we suddenly wish to change the method, will we have the foreign born residents, designated as "neutrals," when the time comes for the belligerent to raise war contributions or make requisitions, demand exemption therefrom, saying: "We do not pay anything; ask our neighbors for our share also; let them pay double."

This would be ungrateful, unjust and base. If one shares in the prosperous times of a country, one should surely, in moments of distress, share in its misfortunes.

Colonel **BOREL** said in his report that neutral persons in occupied territory have no share or responsibility in the conflict.

According to the admitted principle that war exists only between States, the subjects of these States, the inhabitants of a country, both native and foreign born, should remain equally non-combatants, neither should have more respon-

sibility than the other. And if one descends from the Governments of the States to the individuals, giving them also the name and quality of *neutrals*, it must be admitted at all events that it will often be very difficult to locate responsibility. It may even be that foreigners, by their machinations and complaints brought before the Government of their country of origin, have provoked the war; that they *alone* are responsible for it.

In the colonies it will often be impossible to distinguish and separate the nationals from the residents of foreign nationality. One finds there individuals of nearly every nationality on the face of the globe. They are in search of fortune, but pursue it at their own risk and peril. If they have the chance to become rich there, they must know that they may also be risking their skins.

In our vast colonies one still finds, for example, small corners among the tribes of New Guinea, where young lovers in order to win favor with the belles, carry their gallantries so far that they know of no better way of proving their ardor, strength and bravery than by offering them two or three human heads taken from a neighboring tribe or from strangers. What is more natural than that, in order to guard against such barbarity, the inhabitants of civilized nations should band together for mutual succor.

It is a stronger bond even than the bond of nationality that Colonel BOREL has in view. It is the bond of preservation, conservation, security, equality and fraternity which unites the civilized against the uncivilized in the face of a common danger.

If, unfortunately, the scourge of war should come and leave its traces, would you desire this bond to be broken and equality to disappear; would you have one neighbor say to another: Go, I have no concern in this; the burden is yours.

In the committee of examination I voted against Article 66 for practical reasons also. I cannot truly conceive how a commander of an armed force, coming into enemy territory, will be able to distinguish between the nationals and foreign born residents of the country. He has no time to examine birth [85] records or other papers to find whether an individual has or has not another nationality. He has neither time nor means to consult the laws of every country whose nationals he meets, in order to decide whether questions of reciprocity are involved.

The most practical as well as the most just method is to treat all the inhabitants of an occupied country on a footing of equality, that is to say, private property should not be destroyed, impaired, or seized except as the exigencies of war render it imperative, and requisitions and everything that is taken should be paid for in cash, or if that is impossible, receipts should be given which should be redeemed as soon as possible.

Das ist einfach und nett. (That is meet and right.)

For these reasons we shall vote for the proposition of the French delegation.

The PRESIDENT grants the floor to the first delegate of Germany.

His Excellency Baron **Marschall von Bieberstein**: We proposed Article 66 believing it to be in accord with the principles of international law. However, we are not very keenly interested in its adoption for we have treaties, about twenty in number, with various States, which cover the points involved. The terms of these conventions vary but the fundamental idea is that the *ressortissants* of the two contracting parties are exempt on the territory of the other party

from all taxes, forced loans, requisitions, and military services of all kinds, which would be imposed in case of war or by reason of extraordinary circumstances.

Under these conditions, if the majority is of the opinion that Article 66 is not in accord with the principles of international law, we do not desire to insist since we are already protected by our treaties.

The Reporter: It has been endeavored in the report to sum up as impartially as possible the two propositions in question, but I do not wish my silence at this moment to be interpreted as implying abandonment of the propositions of the committee of examination presented to the Commission. All the arguments that I might present in favor of the article in discussion would simply be a paraphrase of the commentary accompanying the report, and I limit myself to this statement.

His Excellency Mr. Beldiman, in the name of the delegation of Roumania, supports the amendment proposed by the French delegation and expresses the hope that it will receive a unanimous vote, in view of the fact that four great military Powers cannot accept the initial proposition of the German delegation.

His Excellency Lord Reay announces that the British delegation likewise supports the French proposition.

His Excellency Mr. Léon Bourgeois takes the floor to recall in a few words the spirit of compromise and understanding which inspired the amendment of the French delegation. The latter had thought it possible, he says, to arrive at a complete agreement on a text drafted solely with a view to eliminating all the objections which seemed to bar the way to the adoption of the committee's draft. The delegation however, attaches no particular interest to it. The maintenance of the *status quo* matters very little to it if the Commission considers that there is no occasion to proceed to the codification of the matter under discussion. If, on the contrary, it is considered desirable to draw up this [86] code we shall be only too happy to see our amendment accepted. However, as it has not been proposed with an idea of arousing a discussion that will divide the Conference into majority and minority parties, I must first ask the first delegate of Germany if he finds it acceptable.

His Excellency Baron Marschall von Bieberstein replies with great regret that it is impossible for the German delegation to accept this amendment, on account of the conventions he has just mentioned, conventions which have been concluded and whose provisions sanction the same principles as Articles 66 to 69 of the committee's draft.

His Excellency Mr. Léon Bourgeois considers that under these conditions the amendment presents no further interest. Its object had been solely to obtain unanimity and the French delegation had no other in submitting it to the Commission. It is better to withdraw it than to permit discord on the subject, for it is useless to dwell longer on this point.

The President states that the amendment of the French delegation being withdrawn the discussion bears only upon the text of the committee.

His Excellency Count Tornielli willingly supports the proposition of his Excellency Mr. LÉON BOURGEOIS. He believes that it would be better to come to a decision on the point of whether new regulation of this subject is desired. If not, further discussion of the question seems to him useless.

The President: I think it better to put Article 66 to a vote. This will be a

vote of principle. If this article is not admitted, those following will likewise be rejected.

Colonel **Borel** calls attention to the fact that in Chapter III there are two categories of provisions entirely distinct from each other. Articles 66-69 and 72 treat of the property of neutrals, while Articles 70 and 71 relate to different questions and would be independent of the vote on Article 66.

The President: That goes without saying. We will proceed then to the vote on Article 66 whose text is as follows:

ARTICLE 66

No war tax shall be levied upon neutrals.

A war tax is deemed to be any tax levied expressly for war purposes.

Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.

Thirty-four delegations take part in the vote.

Voting for: Germany, United States of America, Austria-Hungary, Cuba, Denmark, Ecuador, Greece, Italy, Luxemburg, Norway and Switzerland.

Voting against: Brazil, China, France, Great Britain, Haiti, Japan, Montenegro, Netherlands, Persia, Roumania, Russia, Serbia and Uruguay.

[87] *Not voting:* Belgium, Bulgaria, Dominican Republic, Spain, Mexico, Panama, Paraguay, Siam, Sweden and Turkey.

The President: Article 66 is rejected by 13 votes to 11, with 10 abstentions. Such being the case, it is useless to vote upon the following articles.

We come to Article 70 worded as follows:

ARTICLE 70

Railway material belonging to neutral States or to companies or to private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to its country of origin.

A neutral State may likewise, in case of necessity, retain and utilize to an equal extent material of the belligerent Power found on its territory.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

No objection being raised, the article is adopted.

We will now consider Article 71.

The Reporter recalls that he has been directed to prepare a new text which he reads:

ARTICLE 71

Neutral vessels and their cargo can be expropriated or utilized by a belligerent party if they belong to the river shipping in its territory or in the enemy's territory. Exception is made of the vessels in a regular maritime service.

In case of expropriation the indemnity shall be equal to the full value of the vessel or cargo, increased by 10 per cent. In case of use it shall be the ordinary freight charge increased by 10 per cent. These indemnities shall be paid immediately and in specie.

Their Excellencies Lord REAY, Mr. TCHARYKOW, Mr. LÉON BOURGEOIS, Mr. KEIROKU TSUDZUKI, Mr. MÉREY VON KAPOŠ-MÉRE, RÉCHID BEY, and Colonel TING make reservations to this article.

The President: The article is adopted subject to the reservations of the delegations of Great Britain, Russia, France, Japan, Austria-Hungary, Turkey and China.

There remains Article 72, which is worded as follows:

ARTICLE 72

When movable property belonging to neutrals and utilized under the provisions of Articles 69 to 71 shall have suffered, by the sole reason of their use for a military purpose, any damage in excess of ordinary wear and tear, the belligerent party shall pay for this damage a special indemnity over and above what is due for utilizing them.

The total indemnity for goods destroyed under the same conditions shall be the same as that which would have been paid for the expropriation of these goods.

Articles 66 to 69 being rejected, it is necessary to modify Article 72.

[88] **The Reporter** calls attention to the fact that the principle of Article 72 has not been attacked. It is true that Articles 66 to 69 have been eliminated, but Articles 70 and 71 still stand, and Article 72 refers equally to them.

The President: The wording of Article 72 is too general. It must be put in harmony with what remains of the chapter by limiting its application to Articles 70 and 71.

Mr. Louis Renault declares that the French delegation cannot vote for Article 72, since it involves the application of Article 71 on the subject of which the delegation has made reservations.

His Excellency **Mr. Tcharykow** joins with the French delegation in declaring that he cannot accept nor vote for Article 72.

Their Excellencies **Lord REAY**, **Mr. KEIROKU TSUDZUKI**, **RÉCHID BEY**, and **Colonel TING** make the same reservations.

The President: The reservations of the delegations of France, Russia, Great Britain, Japan, Turkey and China are recorded, and if there are no objections I shall declare Article 72 adopted with the new text submitted by the Reporter, which is as follows:

ARTICLE 72

When railway material or vessels, movable property belonging to neutrals and utilized under the provisions of Articles 70 and 71 shall have suffered, by the sole reason of their use for a military purpose, any damage in excess of ordinary wear and tear, the belligerent party shall pay for this damage a special indemnity over and above what is due for utilizing them.

The total indemnity for goods destroyed under the same conditions shall be the same as that which would have been paid for their expropriation.

The President: We had reserved Article 62 until after the votes which have just taken place. We shall now proceed to the discussion of this article:

ARTICLE 62

A neutral cannot longer avail himself of his neutrality and of the special privileges resulting therefrom according to the terms of Articles 64-72:

a. If he commits hostile acts against a belligerent party;

b. If he commits acts in favor of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent

State as against whom he has abandoned his neutrality than a *ressortissant* of the other belligerent State could be for the same act.

In view of the vote on Article 66 Colonel **Borel** proposes the suppression of the words "and of the special privileges resulting therefrom according to the terms of Articles 64-72."

The **President**: As no objections are raised to the article thus amended it is adopted.

[89] The **President**:

GENTLEMEN: We have now come to the end of our tasks and I believe the Second Commission may rest satisfied with the result of its labors.

The Regulations on the laws and customs of war leave our hands revised, completed and improved in more than one point; the broad and generous spirit which presided over our deliberations in 1899 lives in our present labors. May it be possible, gentlemen, to live up to the Regulations in all their provisions, better than ever before, even with respect to the races we have been accustomed to consider as inferior to ours.

As to the second important subject contained on our program, the regulation of the rights and duties of neutrals, that is a new work which will merit a prominent place in the record of achievement of this Second Conference. Henceforth, the neutral States will know exactly and in advance their rights and duties, and even though our work be indeed open to improvement, it will nevertheless do great service in its present form.

Any results obtained are certainly due to the spirit of conciliation and courtesy which has reigned over our deliberations; we owe very much to our reporters and their remarkable services, and I wish once more to express in your name our hearty appreciation (*Applause.*)

We have all understood that some sacrifices had to be made in the interest of unity of law and of respect for neutrality, and if the future be called on for still further progress, at least a great step will have been taken, and as a sage once remarked: "It is only the first step which costs." (*Hearty applause.*)

His Excellency Mr. **Nelidow**: Gentlemen, the President has just remarked that a spirit of good-understanding, courtesy and conciliation has presided over our labors. Allow me to say that this spirit of conciliation is personified in him and it is to his great experience and sense of equity that the happy conclusion of your labors is due. I am certain of being your true spokesman in expressing to him our most sincere and profound appreciation. (*Hearty applause.*)

The **President** expresses his thanks.

The **Reporter** requests authority to modify his report in conformity with the decisions which have just been reached by the Commission and to leave to the Bureau the duty of finally approving them.

The **President** states that the Commission is unanimous in according to the Reporter the vote of confidence which he solicits and solicits one on his own behalf in respect to the minutes of the present meeting.

The meeting adjourns at 3:45 o'clock.

[90]

SIXTH MEETING

SEPTEMBER 9, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 11 o'clock.

The **President**: GENTLEMEN: Under the impression that we were not to have another meeting you authorized me to approve the minutes of the last meeting. Since we have assembled again I ask if there are any objections to the minutes. There being none, they are approved.

Gentlemen, we certainly have considerable difficulty in reaching an agreement in the matter of the condition of neutrals, but it is not to be greatly wondered at when one considers that this is the first time that an international assembly has undertaken to regulate this subject and that in more than one point the authors are at variance. We have examined the propositions of Germany, France and Great Britain, all of which were inspired by wholly opposite considerations, and we have been unable to come to any general agreement. It was only by a very feeble majority that the committee of examination admitted one system: and it was by a majority but little greater that the Commission preferred another. Finally, in plenary meeting, the Conference, accepting neither of the plans, recommitted the question to us for further study, while our reporter, discouraged, proposed as a way out of the difficulty to suppress the articles on which we were unable to agree.

I believe, on the contrary, that we are in honor bound to come to an agreement; and from conversations I have had since Saturday with several delegates, it seems that perhaps this is not impossible.

We are confronted by two principal difficulties,—the military prestations that may be required of neutrals living in the foreign country,—the respect due their property and the rights that must justly be conceded them should military operations demand interference with the same.

As to the first point, is it really impossible to come to an agreement?

There are, it seems to me, some solutions that do not admit of dispute.

In principle, according to natural law, a citizen owes his arms in defense only of his own country. If he is resident in a foreign country his assistance can be demanded to maintain order, in which he has the same interest as the [91] nationals; he can be required to do police or national guard duty, but in case of war he is not bound to defend a country not his own.

Can positive laws decide otherwise, either for the mother country or for the colonies?

This is the question on which we are divided, but I think there are at least certain points on which we can agree.

In the first place, it is chiefly a matter of treaty arrangement between States and when the matter is thus regulated there is no further need for reference to a general convention. In the second place in no case and under no pretext can the citizen established in a foreign country be compelled to serve against his country. That is a principle of high political morality which we have already sanctioned; and the reporter, Mr. BOREL, rightly states that here as always it must be applied; perhaps the text might formally recall it.

For the rest, could one not get inspiration from one of the elements of the amendment proposed by his Excellency Mr. VAN DEN HEUVEL?¹ I also consider that one owes military service only once and it would be unreasonable for the foreign country to demand it again from those who have left their fatherland only after having fulfilled all their obligations in this regard. The British proposition² is quite positive and scarcely reconcilable with the one of the preceding provisions, but have we not here a useful basis of arrangement? May I take the liberty of recommending this point to the considerate attention of the assembly?

If such an agreement could be reached, it would have reference only to a class of people of but little interest: the cowards and egoists who desert their native land to evade their military obligations and those who, ignorant of their nationality, would be able to escape local prestations only by claiming exemption on the grounds of a foreign citizenship which it would be impossible for them to prove.

As to the matter of prestations in the form of money, could we not limit ourselves to providing that neutrals may not be treated any less favorably than nationals, which would permit the implication that they may be treated better?

Finally, as to the property rights of neutrals, could we not again examine the propositions of the French delegation which were perhaps somewhat prematurely withdrawn? Could we not get together especially on that double principle that neutral property must be treated by the belligerent on its own territory like the property of its nationals, and on enemy territory like the property of the *ressortissants* of the country?

These, gentlemen, are a few suggestions which I believe it my duty to submit again for your consideration; at least you will pardon me on the strength of my good intentions. (*Hearty applause.*) The delegation of Belgium has already submitted the following wordings:

Replace the second paragraph of Article 65 by the following paragraph:

It is also not applicable to persons belonging to the army of a belligerent State by virtue of legislative provisions exacting military service from resident foreigners who do not satisfy the military obligations of their own countries.

Word Article 66 of the amendment proposed by the French delegation as follows:

The property of neutrals shall not be treated by a belligerent less favorably on its own territory than the private property of its nationals, and on enemy territory than the private property of the *ressortissants* of the enemy State.

¹ Annex 46.

² Annex 45.

[92] Major General Yermolow takes the floor and speaks as follows:

Mr. PRESIDENT AND GENTLEMEN: The Russian delegation desires, in a spirit of conciliation, to do all in its power to harmonize the conflicting opinions that have manifested themselves in regard to the complex and difficult question of the treatment of neutrals in belligerent territory.

This question, taken as a whole, is indeed complex, and it seems to us that the best way of solving it would be, not to discuss it article by article but, first laying these texts aside, examine again the two opposing theoretical principles which confront us.

Indeed it seems to us that it is only after having examined these principles that we could pass to the study of the texts. Let us try, therefore, first to examine the fundamental principles before us.

The principal question is this: What status shall be accorded in general to neutral *ressortissants* with regard to the belligerents, both in invaded territory and in uninvaded territory? A status identical with that of the nationals of the belligerents or a different and more favorable status?

To this question there are two possible answers, and two only:

Either the neutrals shall be treated like the nationals, or else they shall be treated differently, that is to say, they shall receive better treatment in regard to their military obligations and their property.

Gentlemen, before undertaking the study of the articles one by one, we should examine these two principles, which appear to be very contradictory. Nevertheless, it would perhaps not be impossible to reconcile them by finding some intermediary solution, which I shall endeavor to do.

The question being so complex, it is necessary first, in order to fix the ideas well in mind, to divide it clearly into two absolutely distinct parts: In the first place, take the question of the neutral living in invaded territory. In this case it is our opinion that the neutral must be subject to the Regulations of 1899; that he must in all respects be placed on the same footing with the inhabitant in general, and that it is the Regulations of 1899, as I had the honor to explain in our meeting of September 2, that will, so to speak, dispose of this phase.

On the other hand, let us take the question of a neutral living in the uninvaded territory of the belligerent. Here, I say that in our opinion the neutral must in general, and aside from the cases in which special treaties thereupon might exist between States, be subject to the same treatment as the national of the belligerent, reservation being made regarding his military obligations which naturally, in virtue of the very fact of his alien character, differ from the military obligations of the nationals. It seems to us, gentlemen, that the viewpoint I have just presented is really not far removed from the two opposing doctrines under discussion. For we have introduced here the idea of special treaties which might exist between States and whose existence seems to be one of the obstacles to the adoption of a uniform doctrine. Our point of view might then be summed up as follows:

I.—Territory of belligerent A not invaded by belligerent B.

[93] The neutral of State C shall be considered by A on the same footing in respect to his property, and excepting military service, as the national of State A, unless he is subject to some special treaty between State A and State C

II.—Territory of belligerent A invaded by belligerent B.

The neutral of State C subject to the Regulations of 1899 shall be treated by B like the inhabitant of territory A, unless he is subject to some special treaty between State C and the invading State B.

It seems to us, gentlemen, that if the Commission would discuss the fundamental doctrine I have just explained the wording of the articles might be greatly facilitated.

The President: The reporter has the floor.

The Reporter: You will judge it quite natural, gentlemen, that your reporter should have considered it his duty to concern himself with the situation created by the vote of day before yesterday. You will also readily admit that no one could be more sincerely desirous than I of preserving a project which has cost us the patient and devoted toil of several weeks, and that the conclusion to which I am about to come is not carelessly formulated by me but is rather dictated by considerations too urgent and just not to be understood and approved by you.

In the remarkable exposition you heard on September 7th, his Excellency the first delegate of Germany criticized the insufficiency of Chapter III of the draft in regard to the title we had given it. The objection, just in principle, would not of itself alone be decisive for one could easily modify the title of Chapter III and, if only outside the special matter of railways the draft contained some progress—even moderate—which was real and tangible, this would furnish in my judgment a sufficient motive to induce the Commission to maintain it. But still, for that it would be necessary that beside Chapter III, which no longer says anything respecting neutrals, Chapter II should devote to them provisions representing something positive. Now it should be clearly recognized that the observations devoted to Chapter II, on Saturday, by his Excellency Baron MARSCHALL VON BIEBERSTEIN, are absolutely irrefutable. I confess that I did not at first grasp the full import of the contradiction which he cited to us; but once pointed out this contradiction appears incontestable and as complete as one can conceive. It is impossible to destroy a stipulated provision more utterly than does Article 65, paragraph 2, with respect to the fundamental principle laid down in Article 64. It is inexact to say in Article 64 that belligerents shall not require of neutrals services connected with the war since, on the contrary, paragraph 2 of Article 65 permits them by the sole exercise of their free will, at present or in the future, to subject neutrals to the maximum of war service—to personal service in the army.

Indeed, we are all of the opinion that Article 65, paragraph 2, should not stand, both by reason of the contradiction indicated and in view of the very numerous reservations which were presented at the plenary meeting of the Conference.

Must it be suppressed?

I had proposed it day before yesterday in the hope of still saving the project; but after reflection I refrain from renewing this proposition here. As his Excellency Mr. VAN DEN HEUVEL has already explained, the suppression of Article 65, paragraph 2, would leave us in a reversed position but presenting exactly the same difficulties by reason of the reservations which would [94] then be made to Article 64. But, adopting important provisions by a

majority vote in spite of reservations of an appreciable minority is—and I believe I can say it in the certainty that I am expressing your unanimous sentiment—a thing to be avoided as far as possible, for that scarcely responds to the spirit of general good-understanding that we must maintain in our labors, to that spirit of harmony which was enjoined recently by our honored president and which the eminent senior delegate of France, his Excellency Mr. LÉON BOURGEOIS, eloquently evoked when to the applause of the First Commission he recalled that we are here not to be counted but to reach a common ground of agreement.

Shall we seek a middle course in the direction of the new Belgian amendment which the PRESIDENT has just read to us? The two systems before us are too diametrically opposed to admit of the possibility of reconciliation. The Belgian proposition, I feel, would not dispel any of the objections raised by each of them, but would rather risk the addition of difficulties of execution which according to the cases and under certain circumstances would not fail to be considerable. No, after the discussions that have already occurred and in face of the difficulties stated, it must be well recognized that in seeking new texts for the project a very real danger would be encountered of engaging in an unfruitful and unsatisfying task.

To sum up:

We have not, it appears, to act again on Articles 61 to 63 which were voted on Saturday.

The considerations just indicated compel us to relinquish Articles 64 and 65 and the same applies to Articles 67 and 68 by reason of the reservations made to each on the part of several delegations.

There remains Article 66 which alone has obtained unanimous vote.

I propose to retain of Chapters II and III only this Article 66, and to present it to the Conference with the *texte* corresponding to the first paragraph of the subsidiary amendment of the Luxemburg delegation. I believe that the Commission should justify this proposition in a supplementary report to the Conference. It is important, indeed, to show that far from being made *ab irato* or under the sway of some inexplicable feeling of weariness or susceptibility, the decision which I have the honor to recommend to you is inspired by objective and powerful considerations and that there is even some sacrifice in so resolving after all the labor accomplished.

I shall not finish without repeating how much I regret that the proposed solution is not more satisfactory; but I am convinced that there is no other under the circumstances I have just recalled. (*Applause.*)

His Excellency Baron **Marschall von Bieberstein**: I share entirely in the views just expressed by my honored colleague of Switzerland.

His Excellency Mr. **Hagerup**: I desire to make a statement. The Norwegian delegation voted for the English proposition¹ because it preserved freedom of internal legislation as to the military service to be required of domiciled aliens. I shall abstain from voting against the second paragraph of Article 65, while reserving to my Government the question of deciding if there should not be some modifications made in the legislation now in force.

The **President**: It only remains for us to proceed to the vote. We are called upon to consider only the text already voted, with the exception of the proposition

¹ Annex 45.

formulated by his Excellency Mr. VAN DEN HEUVEL, if this proposition is still maintained.

[95] His Excellency Mr. **van den Heuvel**: I presented propositions relative to Articles 65 and 66 only with a conciliatory motive, but since these compromise propositions do not seem to receive almost unanimous approval, I withdraw them.

His Excellency Lord **Reay**: I desire that it be stated in the minutes that the British delegation was prepared to vote on the project as it was submitted September 7 to the Conference with the exception of Articles 67 and 68. For the reasons just indicated to us by Colonel **BOREL**, I shall vote for the proposition that he has made, seeing that any decision which the Conference would reach in the circumstances would lack the authority that the Conference should exercise and would only be a manifestation of the differences of opinion which exist in regard to the principles of law upon which the project rests.

The remarkable report of Colonel **BOREL** contains valuable data for a later solution of the matter.

I desire also to make acknowledgment of the excellent work of the assistant secretaries of this Commission.

His Excellency Mr. **Beldiman**: I should like to be perfectly clear in my mind as to the formula to be voted upon.

The **President**: It is quite plain: the proposition admits of the suppression of Articles 66 and those following.

His Excellency Mr. **Carlin**: I desire to know if the vote by the Conference on Articles 61, 62 and 63 still stands.

The **President**: As far as I am concerned, I believe so.

Mr. **Louis Renault**: If this vote stands I am not too certain as to what will become of Articles 61, 62 and 63 and how they will be regarded by the Conference, which has referred the entire project back to the Commission with full powers to act.

The **President**: Articles 61, 62 and 63 appear to me to have been voted for without reservations, but in its next plenary meeting the Conference could obviously complete the slaughter on which it seems resolved by the suppression of the rest of the project.

His Excellency Mr. **Léon Bourgeois**: Mr. **RENAULT** has not demanded slaughter. He has simply made an observation of a formal nature. The Conference having decided to return the entire project, the result is that the Commission is called upon to decide on all the articles without exception.

The **President**: Is such indeed the case? After having adopted Articles 61, 62 and 63, the Conference decided to return the other articles to the Commission for further examination, but for the contingency in which there might result, from the discussion which would follow a rehandling of the whole project, it included in this return the first articles already adopted.

His Excellency Mr. **Nelidow**: Having had the honor to preside at the meeting of the Conference where this decision was taken, I take the liberty of observing that Articles 61, 62 and 63 were, in fact, voted. Afterwards, on coming to Chapter II of the draft arrangement it was decided to return it to the Commission. But at the request of his Excellency Baron **MARSCHALL VON BIEBERSTEIN** the whole project was then returned in order to permit, if the situation

demanding it, an eventual coordination of the articles voted as a result of the new labors of the Commission.

[96] **The President:** No one is better qualified than our eminent President to interpret the vote which has been expressed and I willingly accept his opinion. Mr. RENAULT was then right in saying that we must declare ourselves anew respecting Articles 61, 62 and 63.

His Excellency Mr. **Nelidow** remarks that Articles 61, 62 and 63 having been voted, it seems useless to renew the discussion. He proposes to repeat the vote, taking the three articles together.

His Excellency Mr. **Carlin:** With this idea in mind I should propose to vote first on Articles 61 to 63 and then on Article 66.

His Excellency Mr. **Nelidow:** The three articles in question not being disapproved it would be preferable to vote on them before voting on Article 66.

His Excellency Baron **Marschall von Bieberstein:** If Chapter II is suppressed, there appears to be no reason for retaining Articles 61, 62 and 63.

The Reporter: In regard to Articles 61 to 63 we must not confound two very distinct things:

The value of these articles as such appears to me to be beyond discussion. Adopted without observation they express henceforth truths recognized in international law.

Altogether different is the question of knowing whether they by themselves can form the subject of a convention *ad hoc*. That is, it seems, a question of form, of a rather practical order, whose solution pertains to the drafting committee of the Conference.

As to Article 66, its place appears clearly indicated in the Regulations of 1899, where is already found Article 54 with which the drafting committee will have to combine it.

His Excellency Mr. **Nelidow:** I cannot share the opinion of the delegate of Germany for in my judgment Articles 61, 62 and 63 have not only a juridical value but also a value in principle. The progress of international law is extremely slow. This is the first time that the word "neutral" has been admitted and a study made of the rights and duties of neutrals.

We can restrict ourselves to defining a neutral—by what means he acquires his rights, and how he loses them—it is a great point to have reached this question. If we cannot come to any agreement as to the different details of a regulation, we have at least established the character of the neutral, and in the future in conventions dealing with the question of neutrals, there will be no doubt as to the interpretation of the term. I propose, therefore, to retain these articles embodied in the Regulations of the laws and customs of war, wherein the drafting committee will be able to find their place.

His Excellency Mr. **Carlin:** I share the views of his Excellency Mr. **Nelidow** and declare that the Swiss delegation will vote for Articles 61, 62 and 63 even in case Article 66 should be maintained alone.

The President: Articles 61, 62 and 63 together are put to vote:

These articles are voted unanimously by the following 39 delegations: Germany, United States of America, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador,

France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Luxemburg, [97] Montenegro, Nicaragua, Norway, Paraguay, Netherlands, Persia, Portugal,

Roumania, Russia, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Uruguay, Venezuela.

The **President**: We will now proceed, and under the same conditions, to the vote on the suppression of Chapter III, Article 66 excepted.

Thirty-nine delegations take part in the vote:

Voting for: Germany, United States of America, Austria-Hungary, Bolivia, Brazil, Chile, China, Colombia, Cuba, Denmark, Ecuador, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Montenegro, Nicaragua, Paraguay, Netherlands, Persia, Portugal, Russia, Salvador, Serbia, Siam, Switzerland, Turkey, Uruguay, Venezuela.

Not voting: Belgium, Bulgaria, Dominican Republic, Luxemburg, Norway, Roumania, Sweden.

This suppression is therefore approved by 32 affirmative votes against 7 abstentions.

His Excellency Mr. **Eyschen** offers the following remarks:

It is necessary to inquire into the causes of the failure of some of the resolutions concerning neutrals in belligerent territory.

Many States are anxious to preserve the power to regulate this matter by their internal legislation. They are not unmindful of the legitimacy of certain claims in the interest of neutrals and are ready to conform their conduct to them, but they demand to remain judges of the limits within which these regulations must move.

Other States take account of the great diversity of interests of the different peoples with respect to the foreign population inhabiting their countries. Special notice has been taken of the division of nations into countries of emigration and countries of immigration in order to set forth more clearly the different treatments suitable of application to foreigners living there and belonging to neutral countries.

Such divergencies of situation can be reconciled only by special treaties between those interested.

Under these circumstances those who are interested in the regulation of the rights and duties of neutrals must ask themselves if for the future there is not something expedient to be done in behalf of the situation of these serious problems. Assuredly, we continue to place our hopes in the devotion of the men interested in the science of international law, and the Institute of Public International Law will of course continue to devote all its attention thereto. But is it not also the duty of the Conference to point out to the different interested Governments the fact that by the internal legislation of States and the conclusion of international treaties appropriate to the diversity of interests, many important items of detail for which the required unanimity could not be obtained to-day, will constitute a useful development and desirable advancement in determining the law of nations? Such measures will prepare for the future a basis of agreement which will permit later taking up again projects which to-day we have been obliged to abandon. If these views were shared by the Conference there would be ground for mentioning this opinion in the report to be presented to the plenary meeting. (*Applause.*)

[98] His Excellency Mr. **Nelidow**: The eloquent, almost affecting, words which have just been uttered by the eminent delegate of Luxemburg should be accepted very seriously by the Conference. If the *van* expressed by his Excel-

lency Mr. EYSCHEN cannot at present be made the subject of world-wide arrangements, it will certainly serve to prepare ways for the future. I shall add that it would be desirable to express the *vœu* that this question may not escape the attention of the Governments in order that they may make provisions which leave no doubt with respect to the rights and duties of neutrals, thus taking the first step in the regulation of the condition of neutrals.

The **President**: I beg Mr. EYSCHEN to furnish me with the text of his *vœu* which I equally applaud.

His Excellency Mr. Eyschen: I shall arrange with the reporter as to the form to be given to this *vœu*.¹

The **President**: Gentlemen, may I put to a vote the *vœu* proposed, omitting the wording? Since no opposition arises, the *vœu* is unanimously adopted.

The **Reporter**: As mentioned in the report, the Commission has already decided to propose to the Conference a *vœu* conforming to the first paragraph of the subsidiary amendment of the Luxemburg delegation, worded as follows:

The maintenance of pacific relations, more especially of the commercial and industrial relations existing between the inhabitants of the belligerent States and neutral States, merits particular protection on the part of the civil and military authorities.

The **President**: Once more the approval of the whole assembly seems to be obtained, and I declare the proposition unanimously adopted; the drafting committee will assign it to its proper place.

His Excellency Mr. Nelidow: I can only warmly support a *vœu* which so well expresses my sentiments and responds perfectly to my own ideas.

The **President**: It remains for me to thank you anew, gentlemen, and to state once more that our labors are ended.

The meeting adjourns at noon.

¹ See the Final Act, vol. i, p. 689 [700].

SECOND COMMISSION
FIRST SUBCOMMISSION

FIRST MEETING

JULY 3, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting is opened at 3:15 o'clock by the President, who delivers the following address:

Among the tasks accomplished—laboriously accomplished—by the First Hague Conference, figure with honor the Convention concerning the laws and customs of war on land, and the three declarations which form its supplement.

Surely I do not need to recall to you that Holland is the classic soil of the law of nations. Here it is that as early as 1625 GROTIUS wrote his noble treatise on the laws of war and of peace, and that a century later VATTTEL devoted to them an imperishable book.

But time was required that these ideals might receive some practical realization. The United States of America made the first attempt at the time of the gigantic struggles of the secession. President Lincoln promulgated positive instructions on April 24, 1863, and afterward, in 1898, these same rules were enforced anew in the war with Cuba.

Then came the Congress of Brussels, called forth by the Russian Government; a long labor well conducted and carefully studied which remained without sanction, but the propositions of which were adopted as a regulation by the Russian armies in the campaign of 1877.

At Oxford in 1880, there was a new attempt at codification; and this great work has remained permanently on the order of the day of the Institute of International Law.

In 1892, at Madrid, a Congress exclusively military and in which were represented all the Spanish-American States, decided on a draft code of the laws of war in 80 articles which became the basis of the field regulations adopted in Spain.

Finally in 1899, at The Hague, we succeeded in establishing a body of rules which the High Contracting Parties bind themselves to prescribe for their troops, and which thus form a powerful conventional bond. As was said on April 9, 1900, by Mr. ARTHUR DESJARDINS, my lamented colleague of the Institute of France, at the Society of Social Economy: "Even yesterday, a [102] military commander could say: 'What is the law of nations? A mass of rules hatched in the brain of divers lawyers. It does not suit me to recognize their obligatory force.' We can reply to him to-day: 'These rules have been approved by your own Government, henceforth bound by its signature; they must be obeyed.'"

At The Hague, gentlemen, we have succeeded, thanks to a broad conciliatory

spirit, and also, because we have contented ourselves when necessary with formulas, rather vague and thereby susceptible of satisfying different tendencies.

It is thus that we obtain almost unanimous accord; and to-day we have experienced the great satisfaction of beholding Switzerland and China, who but lately had withheld their signatures, bring us their adhesions.

It may be said that on the whole the work of 1899 is satisfactory and such is the judgment of most of the numerous authors who have written on the subject. However, some consider that in 1864 and 1868 the general pulsation of pity and humanity was stronger than to-day and they reproach the assembly at The Hague for having been somewhat timid. Others on the contrary, and notably Mr. DESJARDINS, consider that the Regulations of 1899 are a true monument erected in honor of the progress of humanity.

The PRESIDENT recalls to the subcommission that the principal subject on the day's program concerns the "additions to be made to the Convention of 1899 on the laws and customs of war on land," and, as stated in the bulletin of convocation, no propositions had been presented on this subject up to yesterday.

Since then, his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL has laid before the bureau two propositions which could be distributed only tardily.¹ And still later he has received propositions from the delegations of Germany, Austria-Hungary and Spain.²

As to the three declarations of 1899 respecting "the prohibition of throwing projectiles and explosives from balloons," "the prohibition of the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases," and "the prohibition of the use of bullets which expand or flatten easily in the human body," no communication on these subjects has yet been received.

The last two are still in force and it does not seem that there should be any occasion for modifying them. The first, which was not long ago the subject of a unanimous vote, having been concluded for only five years, expired in 1904, and the present assembly will have therefore to pass a new vote on this subject.

The PRESIDENT judges it impossible to proceed at once to the discussion of propositions which it has not yet been possible to study, and invites their authors to read them and explain them briefly.

After having caused to be ratified the designation of Major General Baron GIESL VON GIESLINGEN, military delegate of Austria-Hungary, as reporter, Mr. BEERNAERT gives the floor to Mr. Antonio Sánchez de Bustamante, delegate plenipotentiary of the Republic of Cuba, to inform the subcommission respecting two amendments that his delegation proposes to insert in Articles 5 and 14 of the Convention of 1899.³

His Excellency Lieutenant General Jonkheer den Beer Poortugael explains his two propositions.¹ One might consider as superfluous, he says, the addition which I wish to make to Article 44, by which it is forbidden to compel the population of an occupied territory to give information concerning its own army or the means of defense of its fatherland. However, this precision has [103] appeared necessary. By disclosing to the enemy that which he desires to know, the inhabitant of the country would become a traitor to his native

¹ Annex 4.

² Annexes 2, 3, 7 and 6.

³ Annex 5.

land. In our day it is no longer fitting to make disloyal demands and to permit a man to commit acts which would render him despicable in his own eyes and in those of every man of spirit.

The proposed addition to Article 45, forbidding the condemnation to death of an inhabitant of an occupied territory without a sentence imposed by a court-martial and sanctioned by the commander in chief of the army, has for its purpose the prevention of executions on the spot under momentary excitement, to be regretted later, but then, alas, too late.

The second paragraph serves to furnish some security against judicial errors, always possible, but probably much more frequent under the abnormal conditions engendered by war.

Major General **von Gündell**, military delegate from Germany, reads the proposition of his delegation.¹

Mr. **Göppert**, associate delegate from Germany, explains that the tendency of this proposition is not to restrict the inviolability of enemy property to corporeal property, but that it aims at the whole domain of obligations, with a view of prohibiting all legislative measures which, in time of war, would make it impossible for the subject of a hostile State to sue for the fulfillment of a contract before the tribunals of the adverse party.

Major General Baron **Giesl von Gieslingen** communicates to the subcommission two amendments proposed by the delegation of Austria-Hungary to Articles 46 and 53.²

He remarks that the first amendment relating to respect for private property is inspired by the restrictions that the following articles bring to bear upon this principle, notably Article 53, in which it appears indispensable to introduce modifications which are made necessary by modern technical inventions and by the improvements introduced in the means of transmission and transportation on land, on the sea and in the air, for persons, things and news.

His Excellency Mr. **de Villa Urrutia**, first delegate of Spain, finally reads a project modifying Article 6 and relating to the employment of prisoners of war as laborers, to the exclusion of officers, as well as to the wages of prisoners, with a request for the suppression of the clause respecting "deducting the cost of their maintenance."³

The **President** earnestly urges the delegates who may have propositions to file to communicate them to him with the briefest delay.

The meeting closes at 3:50 o'clock.

¹ Annex 2.

² Annex 7.

³ Annex 6.

SECOND MEETING

JULY 10, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 3:30 o'clock.

The minutes of the first meeting are adopted.

The President announces that the order of the day calls for the discussion of the different propositions and amendments relating to the laws and customs of war on land. He reads the amendment of the German delegation¹ relative to the first article of the Regulations of 1899² consisting of an addition to number 2, paragraph 1, of the words: "*and notification of which shall have been made previously to the hostile party.*"

Major General Amourel asks for the floor and reads the following remarks:

The French delegation believes that the following views should be expressed concerning the modification proposed by the German delegation to the first article of the Regulations respecting the laws and customs of war:

The militia, or at least the volunteer corps, will be organized generally at critical moments when it will not be possible to notify the hostile party of their uniforms or distinctive emblems. May not these uniforms, moreover, be liable to receive modifications during the course of a campaign? If this is of long duration, modifications of this nature may become indispensable, even for the regular army. Can a pledge be made to notify the adversary of all these changes? Would not the result be also that each Power would have to communicate to the others the patterns of all the field uniforms and the changes that shall be made in them perhaps only a little while before the opening of hostilities? It does not appear to us possible to accept all these new responsibilities respecting a question of clothing.

The real distinctive mark of combatants, that which never changes, consists in the open carrying of arms. The obligation to do so exists, according to Article 1 of the Regulations of 1899, in respect to the militia and volunteer corps. We approve of the amendment to Article 2 proposed by the German delegation to the effect that the same obligation shall be equally imposed on the population which spontaneously takes up arms to resist an invasion.

We consider then that it is preferable to leave to each Power the care of informing itself respecting the uniform that it finds opposite it, as well in what relates to the militia and volunteer corps as in what concerns the regular army.

This is an obligation imperatively incumbent upon it because it is one of

¹ Annex 2.

² Annex 1.

the fitting means of avoiding the grievous errors in designation of objective, which too often lead to firing upon ones own troops. We must recognize that such errors will be probably more frequent hereafter than in the past, by reason of the greater distances at which battles are conducted, and also because of the anxiety manifested in all armies respecting the visibility of troops, which doubtless will lead them to adopt uniforms having between them much resemblance. Errors in the field of battle can be entirely avoided only as the commander of each side always understands perfectly the position of his own troops; that is to say if he receives promptly a report of all the movements executed, and takes notice continuously of all that transpires within his zone of activity.

A previous notification of distinctive emblems is therefore useless, since armies must employ other measures for identifying the enemy; moreover it would be often impossible.

Therefore the French delegation requests that Article 1 of the Regulations of 1899 may not be modified.

Major General **von Gündell** replies that the German proposition is inspired by the difficulty of recognizing at long distance the distinctive emblems of the militia and the volunteer corps, and that its purpose is the exclusion of all possible mistakes by informing the troops of belligerents of the emblems adopted by the adverse party.

The **President** remarks that the new wording proposed, respecting a previous notification, does not exactly correspond to the thought expressed by Major General **VON GÜNDELL**, it being granted that a very small emblem cannot be seen at a long distance.

His Excellency **Mr. Carlin** approves of the remarks of the delegation of France; he recalls that Switzerland has hesitated for eight years to adopt the Regulations of 1899 which constitute the extreme limit of what his Government considers admissible.

Now, the proposed amendment might be considered as an aggravation added to the present rule.

Under these conditions, he considers it better not to adopt the German proposition. If, however, there is a desire to make innovations in this direction, it would be better to provide for a notification which should be furnished "with the briefest delay possible" in place of a "previous" notification, which the circumstances certainly might often render very difficult, if not impossible.

No one requesting to speak, the **President** puts the amendment to vote. Before the votes are collected, his Excellency **Mr. Keiroke Tsudzuki** declares that the Japanese delegation supports the German declaration and his Excellency **Baron Guillaume** accepts the point of view of the French delegation.

Thirty-four delegations took part in the vote; each one casting but one vote, as directed by the **PRESIDENT**.

[106] *Voting for:* Germany, United States of America, Austria-Hungary, Bulgaria, Chile, China, Italy, Japan, Roumania, Turkey, Venezuela.

Voting against: Belgium, Brazil, Cuba, Denmark, Dominican Republic, Spain, France, Great Britain, Greece, Haiti, Luxemburg, Montenegro, Norway, Panama, Paraguay, the Netherlands, Persia, Portugal, Russia, Serbia, Siam, Sweden, Switzerland.

The amendment is rejected by 23 votes against 11.

The **President** presents for discussion Article 2, which carries with it an

amendment by the German delegation proposing to replace the words: "*if they respect the laws and customs of war*" by the following: "*if they carry arms openly and if they respect the laws and customs of war.*"¹

The **PRESIDENT** remarks that it is no longer a question here, as in the preceding article, of irregular bodies, but of a general uprising of a nation.

Colonel **Michelson** asks how the part of the population which does not bear arms shall be considered, and if by the terms of the proposed amendment, it will not incur the peril of being unjustly under suspicion and being exposed for this reason to reprisals.

The **President** having remarked that there can be no danger in that for all those who are not bearers of any weapon, his Excellency Mr. **Nelidow** calls forth an explanation from Major **von Gündell** in relation to the serious consequences which in his opinion the carrying of prohibited weapons in time of war might entail.

The **President** having called attention to the somewhat vague terms of the proposed wording, Colonel **Borel** observes that, if it should be adopted, it could have no other sense and import than that of stating with precision what is already found in the present text of Article 2, and not of modifying it to the detriment of the population interested.

This discussion being closed, a vote is taken, thirty-five delegates participating in it.

Voting for: Germany, United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, Denmark, Dominican Republic, Spain, France, Great Britain, Greece, Haiti, Italy, Japan, Luxemburg, Norway, Panama, Paraguay, the Netherlands, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden, Turkey, Venezuela.

Voting against: China, Cuba, Mexico.

Not voting: Montenegro, Switzerland.

Consequently, the amendment is adopted by 30 votes against 3, with 2 not voting.

At the request of the **President**, his Excellency Mr. **Carlin** explains that he refrains from voting through fear lest the new text might be regarded as an aggravation of the present condition of affairs.

His Excellency Mr. **Tcharykow** declares that Montenegro intends to reserve her vote until after the great Powers express their opinion.

[107] The order of the day calls for the discussion of the Japanese proposition relative to Article 4, of which the third paragraph would be modified as follows:

All their personal belongings, except arms, horses, military papers, and all other objects appropriate for military use, remain their property.²

The **President** calls for explanations.

Major General **von Gündell** expresses the opinion that the reference is probably to optical instruments, or devices for measuring.

His Excellency Mr. **Keiroku Tsudzuki** states that the objects referred to by his amendment are charts, bicycles and means of transportation appropriate for military use.

¹ Annex 2.

² Annex 10.

The amendment is put to vote, thirty-five delegates taking part.

Voting for: United States of America, Austria-Hungary, Great Britain, Japan, Panama, Roumania.

Voting against: Germany, Belgium, Brazil, Bulgaria, Chile, China, Cuba, Denmark, Dominican Republic, Spain, France, Greece, Haiti, Italy, Luxemburg, Montenegro, Nicaragua, Norway, Paraguay, the Netherlands, Persia, Portugal, Russia, Serbia, Siam, Sweden, Switzerland, Turkey, Venezuela.

The amendment is rejected by 29 votes against 6.

The amendment of the Cuban delegation respecting Article 5¹ which it proposes shall read as follows:

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety, and only while the circumstances which necessitate the measure continue to exist,

gives rise to no discussion. A vote is taken immediately, in which thirty-four delegations take part.

Voting for: Germany, United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Cuba, Denmark, Dominican Republic, Spain, France, Great Britain, Greece, Haiti, Italy, Japan, Luxemburg, Montenegro, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden, Switzerland, Turkey.

The amendment is then adopted unanimously.

The discussion is opened upon the modification proposed by the Spanish delegation to Article 6. The first sentence of this article would be thus worded: *The State may utilize the labor of prisoners of war according to their aptitude, officers excepted.*²

In the last paragraph the words *after deducting the cost of their maintenance*, would be omitted.

[108] Colonel Jofre Montojo reads the following memorandum in support of his proposition:

The Spanish delegation has had the honor to present two amendments to Article 6.

First, in paragraph one, to the effect that officers, prisoners of war, be excepted from any labor, because the word "prisoner" comprehends all prisoners without distinction of rank; and inasmuch as the words "according to their rank and aptitude" are very elastic, it would not be fitting to entrust to the mercy of the captor that decision which might, under certain circumstances, compel the officer to perform annoying tasks.

We believe that so may be interpreted the generous sentiments of all our colleagues of the great military family of the world.

The second amendment proposed is the suppression in the last paragraph of the same Article 6 of the words "after deducting the cost of their maintenance", because Article 7 determines that the Government of the belligerent captor be charged with the maintenance of prisoners of war, who must be treated as regards food, quarters and clothing on the same footing with its own troops; then if by reason of the high price of living in the place where the prisoners remain, a very frequent condition in a country smitten by war, or if by reason of other circumstances, the amount appropriated should not be suf-

¹ Annex 5.

² Annex 6.

ficient, it would never be just or reasonable that the labor of prisoners should assist the captor Government in diminishing the expenses of their maintenance. Otherwise, in my opinion, the captor should be compelled to return the prisoners to their own country.

Major General von Gündell requests that if the Spanish proposition is accepted, the words: *according to their rank*, which apply to non-commissioned officers, may be preserved.

Colonel Jofre Montojo declares his acceptance of this addition.

The President proposes to put to vote at the same time with this proposition, that of the Japanese delegation relative to the same article and consisting in the addition at the end of the third paragraph of the words: *or if there are no rates in force, at a rate suitable for the work executed*.¹

His Excellency Mr. Carlin asks if the three votes should not be taken separately.

His Excellency Mr. van den Heuvel supports this request by insisting upon the separation of the three proposed amendments. The first, he says, concerns the situation of officers who are prisoners; there appears to be accord as to its adoption.

As to the second, relative to "deducting the cost of their maintenance," a question is raised which has already invited the attention of the Brussels Conference in 1874 and of the First Peace Conference. If he well understands the system approved in 1899, it was the desire then to recognize three portions in the pay of prisoners employed by the State or by a fixed administration. the first portion for ameliorating their situation, the second to be put in reserve to constitute savings until the end of their internment, the third subject to retention by the State with a view of covering the expenses of their maintenance.

It is the latter that the second Spanish amendment seeks to suppress. His Excellency Mr. VAN DEN HEUVEL considers there would be disadvantage in its general and absolute suppression. The States cannot be forced to ensure to prisoners a situation more advantageous than that which they would have in their own country, where they would be compelled to employ a portion of their salary in their maintenance.

The Japanese proposition concerning the scales of wages does not appear to raise any difficulties.

[109] No one requesting permission to speak upon the latter proposition, it is unanimously adopted, without any necessity for proceeding to a ballot.

The first Spanish amendment, modified by the German delegation, is also adopted without opposition.

The first sentence of Article 6 will accordingly be thus worded: *The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted*.

The second Spanish amendment relative to the deduction of the cost of maintenance is put to vote. Thirty-five delegations take part in the ballot.

Voting against: Germany, Austria-Hungary, Belgium, Brazil, Bulgaria, China, Denmark, Great Britain, Greece, Italy, Japan, Luxemburg, Montenegro, Panama, Paraguay, the Netherlands, Persia, Roumania, Russia, Serbia, Siam, Sweden, Turkey.

¹ Annex 10.

Voing for: United States of America, Chile, Cuba, the Dominican Republic, Spain, France, Haiti, Nicaragua, Norway, Portugal, Switzerland, Venezuela.

The amendment is rejected by 23 votes against 12.

The **President** presents for discussion the new Article 13a proposed by the Japanese delegation: *The ressortissants of a belligerent, inhabiting the territory of the opposing party shall not be interned unless the exigencies of war make it necessary.*¹

His Excellency Count **Tornielli** supports the amendment, but proposes the insertion of the words *nor expelled* after the word *interned*.

The **President** calls attention to the importance of this addition.

His Excellency Mr. **Keiroku Tsudzuki** declares his acceptance of it.

His Excellency Mr. **van den Heuvel** points out that one may consider the Japanese proposition by reversing it. From an interpretation *a contrario* there would result that the *ressortissants* of a belligerent could be interned as soon as the exigencies of war should demand it.

He inquired whether this text would not permit vigorous measures against foreigners who have never committed an act of aggression.

The **President** proposes in such a case to be contented with the right of expulsion.

His Excellency Mr. **Keiroku Tsudzuki** justifies his proposition by the necessity of providing for future cases analogous to those which have already been presented.

In respect to the addition proposed by his Excellency Count **Tornielli**, his Excellency Mr. **Hammarskjöld** observes that if this should be determined on it would result in diminishing in time of war the right possessed by each State of expelling strangers from its territory whenever it judged this course necessary.

His Excellency Mr. **Nelidow** expresses the opinion that in time of war the internment of the *ressortissants* of a belligerent who have sojourned in the territory of the hostile party, may be preferable to their expulsion in many cases where the latter course would be inadequate to safeguard the interests at stake.

His Excellency Mr. **van den Heuvel** believes that the different opinions [110] may be reconciled by establishing a distinction. If the attitude of the foreigner does not constitute a cause of trouble for the State in the territory of which he is a resident, it is evident that no one will think of disturbing him. If on the other hand his actions should render him an object of just suspicion on the part of the State, the latter may have recourse to two kinds of measures compatible with ideas of equity and justice, either bringing him before the courts in cases of infraction of repressive laws, or expelling him. To go further, it might be presumed that from the beginning of the declaration of war the military authority has most absolute powers to intern all subjects of the adverse party, even the most inoffensive.

His Excellency Mr. **Tcharykow**, taking into consideration that the delegation of Japan has specified in a very clear formula all the exigencies which could be presented, states that he coincides with it in the name of the Russian delegation.

Major General **Amourel** calls for a division of the two formulas proposed by the delegations of Japan and Italy.

The **President** remarks in reply that the delegation of Japan having ac-

¹ Annex 10.

cepted the addition proposed by his Excellency Count Tornielli, the sub-commission finds itself no longer facing more than a single proposition.

Following an exchange of views between Major General Amourel, the **President** and his Excellency Count Tornielli, respecting the right of expulsion which constitutes for each State a question of internal order, it is decided that the amendment shall be sent to a committee of examination which will be appointed at the close of the meeting.

The subcommission then adopts, without any opposition, the Japanese amendment to Article 14¹ consisting of the insertion after the second sentence of the first paragraph of the following words:

The individual return shall be sent to the Government of the other belligerent after the conclusion of peace; the bureau must state in it the regimental number, name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.

There is also adopted without discussion the amendment of the delegation of Cuba relating to the same article and concerning prisoners *who have been released on parole, or exchanged or who have escaped*.²

The last sentence of the first paragraph and the second paragraph will be worded then as follows:

It is kept informed of internments and transfers as well as releases on parole, exchanges, escapes, admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., . . . found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped or died in hospitals or ambulances, and to forward them to those concerned.

The amendment of the delegation of Japan modifying as follows Article 17¹:

The Government will grant, if necessary, to officers who are prisoners in its hands, a suitable pay, the amount to be refunded by their Government, is then presented for discussion.

The **President** remarks that the new wording would have the disadvantage of permitting the Government to accord nothing.

[111] His Excellency Mr. Keiroku Tsudzuki supports his proposition. Its object, he says, is to remove from the text of the article in question a phraseology which, in his opinion, does not seem sufficiently explicit to warrant an unequivocal interpretation.

His Excellency Mr. Beldiman considers it necessary to state plainly that the amendment will not be able to accomplish any improvement in the situation of prisoners.

On the suggestion of the **President** the question is referred to the committee of examination.

The discussion is opened upon the new Article 22a proposed by the dele-

¹ Annex 10.

² Annex 5.

gation of Germany to replace Article 44¹ and upon the modification of the new text requested by the delegation of Austria-Hungary.² The new Article 22a would be worded as follows:

It is forbidden to compel *ressortissants* of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

The amendment asked by the delegation of Austria-Hungary consists in inserting after the words "*to take part*" the words "*as combatants*."

Major General Amourel asks that the discussion of this question be postponed to an early meeting.

Major General Baron Giesl von Gieslingen presents the following explanations in regard to his proposition.

It would seem desirable to establish an absolutely clear distinction between "operations of war" in which the population of the hostile State cannot be compelled to take part, and certain "military services" that this population can, in certain cases, be compelled to render.

Thus, the military chiefs could scarcely forgo the employment, in a provisional way, of the subjects of the hostile State for some service with the army train, in the capacity of guides, and for work on roads and fortifications.

On the other hand, in our judgment, nothing would seem to stand in the way of a formal prohibition against forcing the *ressortissants* of the enemy State—both individually and collectively—to participate with arms, that is to say "*as combatants*" in the military operations.

His Excellency Count Tornielli points out the gravity of the question of principle thus raised, and announces that he joins in the request for postponement made by General AMOUREL.

The President announces that a new discussion will necessarily follow the examination of the committee of examination to which the question is referred.

They pass to Article 23, to which the delegation of Germany proposes to add a new paragraph 4¹ thus worded:

To declare abolished, suspended, or inadmissible the private claims of the *ressortissants* of the hostile party.

Colonel Borel asks for the insertion of the words "*in a court of law*" after the word "*inadmissible*."

Major General von Gündell accepts this addition in the name of the delegation of Germany.

[112] Upon Colonel Michelson's declaring that he supports the new text but requests the addition to it of the words "*if these ressortissants take no part directly or indirectly in the war*," an exchange of views on this subject ensues between him, Mr. Göppert, Colonel Borel and the President, after which his Excellency Mr. Tcharykow requests that the question be referred to the committee of examination. There is also sent to this committee the proposition of the delegation of the Netherlands³ proposing the addition to Article 35 of the following paragraph:

¹ Annex 2.

² Annex 3.

³ Annex 9.

The capitulation to the enemy of an armed force is not obligatory for the detachments of that armed force which are separated from it by such a distance that they have preserved a liberty of action sufficient to continue the struggle independently of the main body.

At the request of his Excellency Count **Tornielli** the committee will also attend to the striking out of Article 44, requested by the delegation from Germany in consequence of the new Article 22*a*, which it has been decided to refer to the committee.

In the absence of his Excellency Lieutenant General Jonkheer den Beer **Poortugael**, detained at the Council of State, there are also transmitted to the committee of examination the amendments filed by the delegation of the Netherlands¹ proposing that Articles 44 and 45 be followed by two new Articles 44*a* and 45*a*, thus worded:

ARTICLE 44*a*

It is forbidden to compel the population of occupied territory to give information concerning their own army or the means of defense of their country.

ARTICLE 45*a*

It is forbidden to punish an inhabitant of an occupied territory by death without a sentence of a war council. This sentence must be sanctioned before it is executed by the commander in chief of the army.

The President reads the new wording of Article 46, presented by the delegation of Austria-Hungary:²

Family honor and rights, the lives of persons, religious convictions and practice, as well as in principle private property, must be respected.

He calls attention to the gravity of the proposition, it being conceded that the principle of respect for private property had been affirmed in 1899, and that the present Conference ought in no way to weaken it.

His Excellency Mr. **Carlin** shares in this view and declares himself opposed to the adoption of the words "*in principle*."

Major General Baron **Giesl von Gieslingen** affirms that his amendment in no respect seeks to harm this principle and that it rests solely upon the restrictions contained in the following articles, especially in Article 53. He considers that the issue is chiefly a question of wording. The amendment is then referred to the committee.

The discussion is opened on the proposition of Denmark relative to Article 53,³ providing for the insertion of the following provisions:

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

[113] His Excellency Mr. **Brun** does not believe it necessary to lay stress upon the reasons which have prompted his amendment for protecting more particularly submarine cables.

¹ Annex 4.

² Annex 7.

³ Annex 12.

His Excellency Lord **Reay** asks for a postponement of the question because of its importance.

Mr. **Göppert** having asked if this matter is not related rather to the program of the second subcommission, the **President** remarks to him that it is of a mixed character and has equal relation to both subcommissions, adding that it will be sent to the committee of examination.

The Austro-Hungarian proposition relative to Article 53¹ and the Japanese proposition relative to Article 57² are referred to the next meeting.

His Excellency Mr. **Keiroku Tsudzuki** announces that the words *in case of violation* should be struck out from the text of the new Article 57*b* proposed by his delegation, and which in consequence should read as follows: *A parole given to a neutral State by the persons mentioned in Article 57a shall be deemed equivalent to one given to the adverse party.*

Before closing the meeting, the **President** proceeds to the appointment of the committee of examination, which will comprise, besides members of the bureau of the Second Commission, Major General VON GÜNDELL, Major General Baron GIESL VON GIESLINGEN, Lieutenant General AMOUREL, Lieutenant General Sir EDMOND R. ELLES, Major General YOSHIFURU AKIYAMA, his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL, and Major General YERMOLOW.

The calls will be directed to the members of the committee with the least possible delay, so as to enable them to meet before the end of the week.

The meeting adjourns at 5:10 o'clock.

¹ Annex 7.

² Annex 10.

THIRD MEETING

JULY 24, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 3:15 o'clock.

The minutes of the second meeting are adopted.

The **President** reminds the subcommission that during its last meeting it entrusted to a committee of examination the care of examining the amendments proposed by different delegations to several articles of the Regulations of 1899 respecting the "*Laws and customs of war on land.*"

The committee met on the 13th of July. It charged Major General Baron GIESL VON GIESLINGEN with the summing up of his labors, and the report of the latter ¹ has been distributed to the members of the subcommission. It is upon his conclusions that we are to act to-day.

The first amendment examined by the committee related to Article 13 and emanated from the delegation of Japan,² which proposed a new wording thus expressed:

The *ressortissants* of a belligerent, inhabiting the territory of the opposing party shall not be interned unless the exigencies of war make it necessary.

The **PRESIDENT** calls attention to the character of this amendment, which has nothing in common with the present Article 13, and to the gravity of its issues. It follows from its text that a civil population, not belligerent, might be interned even *en masse* without previous trial and without allegation of grievances, under the pretext that the exigencies of war make it necessary. He recalls briefly the discussion of the amendment in question which took place in the meeting of July 10, and adds that the committee of examination has been inclined to discard it.

He asks the first delegate of Japan if under these circumstances he believes that it should be maintained.

His Excellency Mr. **Keiroku Tsudzuki** declares that the Japanese delegation does not abandon its amendment. He reserves the privilege of speaking later in justification of it.

[115] Major General **von Gündell** states that the proposition of the Japanese delegation provides the new Article 13a not as a substitute for, but as an addition to the old Article 13.

The **President** calls attention to the fact that in reality the terms of the report are not exact in this regard, but that the new Article 13a which the Japanese delegation seemed to have abandoned, appears to be contradictory to the decisions of the Conference of 1899, and he therefore requests Mr. **TSUDZUKI**

¹ Annex to this day's minutes.

² Annex 10.

to be good enough to resume the discussion of the subject if the proposition is maintained.

Mr. Keiroku Tsudzuki takes the floor to explain the meaning of his amendment which consists principally in protecting from internment after the beginning of war, the *ressortissants* of the belligerent who reside in the territory of the adversary. It has been said that there were only two cases of internment of this kind, but it seems that history shows more than that and it is our duty to determine for the future just what authority a belligerent may exercise in this respect. The Italian proposition, deposited as an amendment to the Japanese proposition,¹ is, moreover, closely connected and it would be well to examine them together.

The President asks his Excellency the President of the Conference to take the chair for a few minutes so that he may answer the Japanese delegate on the subject under discussion.

His Excellency Mr. NELIDOW having taken the chair, his Excellency Mr. Beernaert explains the reasons of fact and law which, in his opinion, stand in the way of the adoption of the Japanese amendment. According to the principles which served as a basis for the 1899 Convention, war is limited to belligerents, and the civilian population cannot be made to suffer from it either in regard to their *honor, life, family rights, private property, or religious convictions and practice*.

But, the Japanese proposition in the form of a restriction to the rights of the belligerents, again calls these principles into question. To intern someone is to deprive him of his liberty and to strike inoffensive inhabitants.

The first delegate of Japan tells us that he is referring only to the *ressortissants* of the adversary living in the territory of the belligerent and not in their own territory occupied by the latter. Why this distinction and how justified? Here is France at war with Germany. The German authorities who could not intern the inhabitants of the occupied territory in France, could compel the French people of Cologne to go live in Dantzic; and that, not as an act of national authority but by virtue of a Convention agreed to by France.

The Convention in force permits only the internment of prisoners of war (Articles 3, 52) and on the proposal of the delegation of Cuba, this right was modified unanimously. Neutral Powers intern only the belligerent troops who come into their territory to lay down their arms (Articles 57, 58). Are these provisions now to be extended to all the *ressortissants* of the belligerent living in enemy territory?

There is, I think, no example of such internments in any of the wars of Europe and I know of no precedents, except those of Cuba and the Transvaal, which are not very commendable.

But those who are interned must be fed. The homes they have been compelled to leave must be guarded, and I see nothing like this in the Japanese proposition.

Moreover, the interests in view are covered by the right which every nation has to expel any foreigners who appear to it dangerous.

[116] His Excellency Count Tornielli calls attention to the fact that when

Article 13a of the Japanese proposition first came up for discussion, he had requested that the provisions of this article protecting the *ressortissants* of

¹ Annex 11.

a belligerent living in the territory of the adverse party against a general measure of internment not sufficiently justified by the necessities of war, be extended to cases of expulsion. No action having been taken on this subject and the question having been referred to the drafting committee of the first subcommission, the Italian delegation stated its views in an amendment which it sent to this committee through his Excellency the President of the Second Commission. It does not appear that the drafting committee has taken cognizance of this amendment. At any rate the report of the committee does not make the slightest allusion to it.

If the Japanese delegation had abandoned the proposition it made in presenting Article 13a, the Italian delegation would not have insisted upon having its amendment taken into consideration. It would have considered the Regulations of 1899 sufficient. But since Japan maintains its article, the delegation of Italy must explain very briefly its amendment and the reasons therefor.

Since it appears that the Japanese proposition aims at certain instances which have occurred since 1899 and which would lead to doubt in respect of the right of the *ressortissants* of a belligerent State to continue to enjoy, in the territory of the adverse party, the protection of the local laws as regards their persons, property and business affairs, the Italian delegation thought that this principle, which had formerly been generally applied, should be sanctioned by a provision of the new convention. While desiring to take into consideration as far as possible the exigencies of military interests, the Italian delegation has added two exceptions to the statement of the general principle, for the cases in which it would be dangerous for the belligerent to allow the *ressortissants* of the enemy to reside in certain localities. The first of these exceptions applies to measures of internment: the second to the measure of expulsion. As to this second, it has already been objected that the right of expelling a foreigner is written in the police laws of a great number of States and that, consequently, it would be useless and even dangerous to include it in an international agreement. The Italian delegation does not deny that this objection is well founded; but when in its proposition it says that individuals may be expelled if their conduct is considered dangerous, it means to affirm that on the other hand expulsions *en masse* are forbidden.

His Excellency Mr. A. Beernaert considers that the right of expulsion belongs to each particular State, and that it is a question for the local legislations to regulate. According to him a world convention should not interfere in this matter.

His Excellency Mr. Keiroku Tsudzuki says that there is a connection of ideas between the Japanese proposition and the Italian amendment inasmuch as the first concerns *internments en masse* and the latter *expulsions en masse*. But the Japanese delegation will not insist upon a vote on its original proposition provided that the interpretation in the sense of its proposition is inserted in the minutes.

His Excellency Mr. Milovanovitch states that the Japanese proposition tends to regulate the conditions under which the *ressortissants* of a belligerent may be interned. The PRESIDENT, he says, declared that this provision would put the Conference back a step; but it is proper to recall that one of the two examples cited in this discussion, that taken from the concentration camps of the Transvaal, happened since the Conference of 1899.

[117] His Excellency Mr. A. Beernaert observes that that Conference did not

include representatives from the Transvaal and that the conventions of 1899 were closed conventions.

His Excellency Mr. **Milovanovitch** states precisely his opinion, asking that it be specified how the provisions of the 1899 Convention on this subject must be interpreted. If they forbid internments *en masse* the Japanese amendment would constitute a step backward; but, in the contrary case, it would be a step forward.

His Excellency Mr. **A. Beernaert** having replied by reading again Articles 3 and 5 on the one hand, and Article 43 of the 1899 Convention on the laws of war on the other, his Excellency Mr. **MILOVANOVITCH** declares that under these conditions he agrees with him.

His Excellency Count **Tornielli** declares his willingness to accept the interpretation just given to Article 5 of the 1899 Regulations. This interpretation would be to the effect that since it is permitted to subject prisoners of war to internment, the other *ressortissants* of the enemy State who are not prisoners cannot be interned. Article 5 would doubtless have this same meaning if it stated that prisoners alone can be interned. But will Article 5 in its present form always receive the interpretation which his Excellency Mr. **BEERNAERT** wishes to give to it? Doubting this, Count **TORNIELLI** does not think it necessary to renounce all hope of obtaining the approval of the subcommission regarding his amendment so long as the Japanese delegation maintains its proposition.

His Excellency Mr. **A. Beernaert** reminds his Excellency Count **TORNIELLI** that Article 5 states expressly that prisoners of war can be interned, which furnishes a forcible argument *a contrario*, and that, on the other hand, the inhabitants of occupied territory have the right, by virtue of Article 43, to the maintenance of public order and safety by respect for the laws in force,—which implies an interdiction of all arbitrary measures.

As to foreign *ressortissants* in the territory of the belligerent, they are subject to the local legislation and he considers internments or expulsions *en masse* as belonging to another age.

His Excellency Count **Tornielli** states that as an argument for the rejection of the Italian proposition the provisions of Article 43 are cited. While regretting the necessity of insisting, he confines himself in his turn to asking his colleagues to take into consideration the place occupied by this article in the 1899 Regulations. It is inserted in section 3 entitled: "On military authority over the territory of the hostile State"; he therefore finds no application therein to the question of the treatment to be applied by a belligerent on its own territory to the *ressortissants* of the other belligerent.

Concerning the objection of his Excellency Mr. **BEERNAERT** relative to the right of expulsion depending upon local legislation, the speaker does not deny that this right of sovereignty should be exercised especially in legislative freedom. He thinks, nevertheless, that the treaties and conventions freely accepted by the States often lead them to introduce modifications in their internal laws in order to adapt them to the engagements made reciprocally with other countries. That happens in the case of a great many conventions and treaties.

His Excellency Mr. **Nelidow**, president, proposes to scatter all differences of opinion by taking a vote on it.

[118] His Excellency Mr. **Carlin** believes it best to vote first on the Japanese

proposition. If it is rejected the Italian proposition would be withdrawn *ipso facto*, in view of the arguments presented by his Excellency Count TORNIELLI.

His Excellency Count Tornielli agrees with his Excellency Mr. CARLIN. He said at the beginning of this discussion that he would not insist on the Italian amendment if the Japanese delegation abandoned its proposition. But if in the new regulations a provision is introduced prohibiting the internment *en masse* of the *ressortissants* of the enemy State a similar clause must be added to cover expulsions *en masse*.

His Excellency Mr. Keiroku Tsudzuki declares that he will not insist upon the Japanese proposition provided the minutes record the restrictive interpretation given by his Excellency Mr. BEERNAERT to Article 5, according to which prisoners of war *alone* can be subject to internment to the exclusion of all the civil population.

His Excellency Mr. Nelidow proposes that the assembly be consulted on this point of interpretation.

Major General Amourel declares that the French delegation can accept neither the proposition of the Japanese delegation nor that of the Italian delegation which seem to him to impair the right of sovereignty of a belligerent on its own territory.

No State will take measures of any kind against the *ressortissants* of the enemy who continue to live in accordance with its laws and do not appear to be detrimental to its security. But, on the other hand, if the *ressortissants* constitute a danger for the country which has received them, the latter has the absolute right to protect itself and no restriction can be placed on the means at its disposal according to the general rules of law.

After an exchange of views on this question of interpretation, in which their Excellencies Mr. Nelidow, Mr. A. Beernaert, Lord Reay and Major General Amourel take part, his Excellency, Mr. Keiroku Tsudzuki declares that after hearing the explanations of his Excellency Mr. BEERNAERT he does not ask for a vote on the Japanese proposition if the interpretation given by the latter to Article 5 is approved without remark by the Commission and is inserted in the minutes.

His Excellency Count Tornielli remarks that if it is stated in the minutes that Article 9 of the 1899 Regulations is to be interpreted as forbidding the internment of the *ressortissants* of the enemy who are not prisoners of war, he must request that the minutes likewise state that from the discussion which has taken place it results that the measure of expulsion *en masse* of these *ressortissants* is assimilated to the measure of internment and is equally forbidden.

No objection is expressed.

The discussion is declared closed.

His Excellency Mr. A. Beernaert, resuming the presidency, declares that agreeably to the wish expressed by their Excellencies Mr. TSUDZUKI and Count TORNIELLI, the minutes will state that the Commission agreed on the interpretation which he has given to Article 5.

No objection arising, the Commission passes to the order of the day and the PRESIDENT submits for discussion the Japanese amendment relative to Article 17.¹

¹ Annex 10.

[119] The amendment proposes to substitute for Article 17 of the 1899 Regulations the following text:

The Government will grant, if necessary, to officers who are prisoners in its hands, a suitable pay, the amount to be refunded by their Government.

The PRESIDENT states that it was the opinion of the committee that the words "if necessary" should be omitted in order to give an obligatory character to the article, and that the majority deemed it advisable to make the text agree with the text of the Geneva Conference of 1906 dealing with the salaries of the medical personnel when prisoners. It was decided at Geneva (Article 13, Chapter III) that their salaries should be paid by the captor State and should be the same as that given to officers of the same grade in the army of that State.

The formula adopted by the committee in conformity with this principle, without objection on the part of the military delegate of Japan, is as follows:

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its army are entitled, the amount to be refunded by their Government.

This text is open for discussion.

His Excellency Mr. Keiroku Tsudzuki declares that Major General YOSHIFURU AKIYAMA was not in favor of this text in the meeting of the committee. In order to avoid all misunderstanding on the subject he presents the following observations to the subcommission:

Article 17 as amended by the Commission would allow to officers when taken prisoner the same pay as that received by officers of the same grade of the captor country.

The state of affairs resulting from the adoption of the above-mentioned amendment would be far from satisfactory.

The pay of an officer has rather the character of an allowance to meet the expenses of maintaining his representative position and the necessary expenses for the upkeep of his family than the character of a remuneration or payment for services rendered the State for a given period of time. The acceptance of the proposed amendment would consequently necessitate something that is undesirable, namely, a fundamental revision of the pay system and the adoption of a system of eventual reduction of the national allowance in order to prevent officers taken prisoner from drawing double pay.

On the other hand, the Japanese delegates do not see sufficient reason why officers whom the chances of war make prisoners and whom the captor State maintains by virtue of Article 7 of the Hague Convention of 1899, should receive the same pay as the officers of corresponding grade of the captor State who, in addition to the expenses of their own maintenance, may have to support a family. Neither are the Japanese delegates convinced of the analogy established between military officers and the members of the sanitary corps. The latter have on account of their profession a certain right of inviolability; they continue to practice their profession even when under the control of the enemy, and they can in no case be considered as prisoners of war properly speaking.

If there is no possibility of adopting the amendment proposed by Japan the Japanese delegates would prefer then that the provisions of Article 17 be maintained in their present form

The **President** states that the Japanese proposition being maintained, it is for the subcommission to choose between it and the original text of Article 17 as elaborated in 1899.

[120] If the Japanese proposition is not adopted the article will remain in its present form unless someone takes up again the amendment drafted by the committee.

He consequently proposes to submit the Japanese proposition to a vote.

General **de Robilant** remarks that it is especially necessary to establish the obligatory character of the pay to be allowed officers taken prisoner. It matters very little how this allowance is entitled; the important point is that it be clearly specified that it is obligatory. The words "*if necessary*" being in the old wording and maintained in the Japanese proposition, the obligatory character is not indicated in either. The Italian delegation considers that it should be inserted in the new wording whatever may be the solution adopted in regard to the portion allowed.

His Excellency Mr. **Carlin** states that the committee thought it was unanimous in approving the text drawn up in its meeting of July 13, as it appears on page 3 of the report of Major General Baron GIESL VON GIESLINGEN. All the members had been under the impression that the Japanese delegation accepted it. It seems, according to the declarations of his Excellency Mr. TSUDZUKI, that there has been a misunderstanding in this respect. However, this is no reason why a vote should not be likewise taken on the text of the committee.

The **President** declares that the two texts shall be submitted to a vote; first that of the Japanese delegation, then that of the committee, which has just been taken up again by his Excellency Mr. CARLIN.

His Excellency Mr. **Keiroku Tsudzuki** asks that the amendment of the committee be voted upon first.

The **President** proceeds to the vote on this text. It is adopted by 34 votes out of 35, the delegation of Japan alone voting nay.

Such being the case there is no occasion for voting on the Japanese proposition.

The **President** declares the discussion opened on the new Article 22a proposed by the German delegation¹ and on the suppression of the old Article 44 which would follow as a consequence of its adoption.

New Article 22a is thus worded:

It is forbidden to compel *ressortissants* of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

An amendment proposed by the delegation of Austria-Hungary² consists in inserting the words "*as combatants*" after the words "*to take part*" with a view to limiting the prohibition now in force.

The **PRESIDENT** believes it necessary to call attention to the fact that the new Article 22a would have an entirely different place in the Regulations.

Article 44, which it is proposed to omit, is in the third section of the Regulations of 1899 entitled "*On military authority over the territory of the hostile*."

¹ Annex 2.

² Annex 3.

State." The new Article 22a destined to replace it would come under the heading "*Means of injuring the enemy*," in Chapter I of the second section.

The committee of examination has made no objection to this arrangement but we must first be sure that there is no better place to put it. This [121] question comes within the competence of the general drafting committee and the PRESIDENT proposes that it be referred to it; it is thus decided without opposition.

He then recalls that the committee accepted the German amendment without objection saving a slight change of form in the words: "*if they were enrolled in its service*," which were modified to read "*if they were in its service*." This amendment can then be considered as having been approved by the committee; but the Austro-Hungarian amendment has been lengthily discussed and the debate is reopened on this subject.

Major General Baron Giesl von Gieslingen supports this amendment in the following words:

Although the delegation of Austria-Hungary has already given its opinions on this subject in one of the preceding meetings, I shall permit myself to-day to add a few words in order that there may be no misunderstanding or misinterpretation.

There is no need for my saying to an assembly which contains so many illustrious representatives of nearly every army in the world, that in every war offensive action remains to-day, as it always has been, the basis of success.

If this is really the case each army will endeavor to take the offensive at the outbreak of hostilities, and this offensive, when successful, will necessarily lead into enemy country or neutral country, that is to say the population encountered will comprise *ressortissants* of the enemy State or the neutral State.

It is now clearly to be seen that a military commander cannot, or at least not always, forego securing temporary assistance in the form of military services which can be rendered him only by the said enemy or neutral population.

There are two questions which seem to alarm the non-military men.

The first is the question of guides.

Gentlemen, every country is not like France, Germany, the Netherlands and other countries in Europe with their close network of roads and excellent maps.

There are countries in Europe where maps are entirely lacking.

Is it necessary to remark that there are mountains at times surrounded by fog, and that the day is regularly followed by the night, which renders consultation of maps absolutely impossible?

The commander upon whom rests the entire responsibility for so many lives entrusted to him cannot often hesitate to have recourse to information furnished by an enemy or neutral guide.

The second question concerns other strictly necessary services such as the assistance of the population in building roads, fortifications, etc.

I shall content myself with citing two examples:

A commander, under orders to cross a stream or river, does not find the necessary material at the place indicated to construct a foot bridge.

Can he hesitate to make the population of a town furnish him with the necessary boats and material to accomplish his task?

What difference is there between this service and the daily charge of furnishing the enemy troops with food and lodging?

Another example:

In modern warfare battles sometimes last several days and the fighting lines often exceed one hundred kilometers.

[122] Such a line of combat needs points of support which must be hastily fortified, often in a few hours, and a commander cannot in most cases get along without the assistance of the population, his own troops being weakened from fighting.

In any of these cases, gentlemen, the population will not be mistreated and this work will assuredly be the least of the inconveniences to which it might be subjected during the campaign.

A prominent person asked me: Then if you were in France would you want to force the French people to construct fortifications against French troops?

I can only reply by turning the question around in this way: If the Austro-Hungarian troops were beaten and the enemy invaded our country, we should consider it perfectly justifiable and natural for the enemy to employ our population to safeguard its superior military interests.

And as we do not wish the conventional provisions stipulated here to remain in that case a dead letter, we feel obliged in loyalty to set forth the difficulties which might arise in such a situation.

As, according to us, it can be a question of immorality only if the population is forced to fight with weapons in hand against its own country, we propose to have the words "as combatants" inserted in the German amendment.

The **President** asks the subcommission if the debate would not be shortened by combining with the discussion of Article 22 that of the new Article 44a presented by his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL ¹ and thus worded:

It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defense of their country.

The committee approved this proposition by seven votes to six. It raises the same questions of principle as the German project.

Major General **Yermolow** asks that the question of preserving the existing texts be discussed before the Netherland amendment, and makes the following declaration:

In the meeting of the committee of examination the Russian delegation declared that it thought the preservation of the existing texts of the Convention preferable to the adoption of the new Article 22a if the amendment proposed by Austria-Hungary were not adopted.

In thus supporting the amendment of Austria-Hungary the Russian delegation agrees entirely with the explanations given in our preceding meeting by Major General Baron **GIESL VON GIESLINGEN**, to wit, that it was necessary to clearly establish a distinction between "the service" in which the enemy population cannot be forced to participate and "the services" which this population can in case of imperative and grave necessity be compelled to render.

To this explanation of my honored colleague from Austria-Hungary I request permission to add that in so far as concerns "the service" of enemy *ressortissants* in the ranks of the army, it is already forbidden by Article 44 of the

¹ Annex 4.

Convention whose provisions are in accord with the meaning of Article 52. The introduction of the new Article 22*a* would therefore seem to us to be superfluous.

For my part, I am the more in accord with the prohibition established in [123] the two articles, as the military regulations of my country themselves forbid the enrollment and acceptance of foreigners in the ranks of the Russian army.

The prohibition of which I speak could then interest only other nations and not Russia.

But, so far as concerns "the services" outside the ranks that the enemy *ressortissants* might be called upon to render, I must say, gentlemen, that these services, in the form of work on roads, camps, hospitals, trains, etc., are often absolutely indispensable to armies. These services are already authorized by the text of Article 52 which stipulates that they may be required of the inhabitants for the needs of the army. Consequently, if Article 22*a* were adopted without adding the amendment of the words "as combatants" it would be in contradiction with the meaning of Article 52 and would contribute to the whole question only ambiguity, obscurity and confusion.

The delegation of Russia therefore sees no necessity of changing the existing texts and proposes simply to retain Article 44 which, together with Article 52, appears to us amply sufficient and settles the matter.

The President believes it well to have the first paragraph of Article 52, just mentioned by Major General YERMOLOW, read to the subcommission; it is thus worded:

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

He gives the floor to Major General von Gündell who is desirous of calling the attention of the subcommission to the essential part of the German proposition. This does not rest, he says, in the last part of Article 22*a*, that is to say, in the words: "*even if they were enrolled in its service before the commencement of the war.*" What the German delegation has desired above all is to extend to all the "*ressortissants of the hostile party*" the benefit of the prohibitions which the Regulations of 1899 extend only to "*the population of occupied territory.*" This distinction explains the place that the German delegation believed its proposition should occupy, which thus belongs in the section relating to the means of injuring the enemy while the old Articles 44 and 52 treat of military authority on the territory of the enemy State.

His Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL defends the Netherland amendment contained in Article 44*a* after the PRESIDENT had stated without opposition that the questions there dealt with are just the same as those referred to in the German proposition now under discussion.

His Excellency Lieutenant General Jonkheer den Beer Poortugael speaks as follows:

There are some scruples about accepting Article 44 as proposed by me.

It has been said: "This article concerns guides, and we soldiers need them: we cannot do without them."

Yes, it is a question of guides, but not only of them. There are others. If the enemy has invaded a certain country, it can send for the inhabitants, men and women, and interrogate them with threats of shooting them instantly if they do not give satisfactory information.

If it asks: "Where are your men? What is their strength? Where have they gone? What are their plans?" everybody has not the coolness and courage of the Prussian cited by the historian ARCHENHOLZ, who upon being asked [124] these three questions: "*Where are your men?*" "*What is their strength?*" "*What are their plans?*", replied: "*Look for them.*" "*Count them.*" "*Go ask them.*"

This Prussian was more than a courageous soldier; he was a philosopher, a lawyer versed in the true principles of the rights of war, for it is not for peaceful inhabitants to furnish the means of making war upon their fatherland. It is up to the soldiers, the generals, to find out for themselves what they want to know. They have the means to do it. They have maps, scouts; they have only to send in front of their columns their light cavalry, patrols, well-mounted officers to make raids; they have their spies and their intelligence bureaus.

Recourse to the guides of the country is often very dangerous. More than once they have led the enemy troop into an ambush. Thirty years ago there were not so many ways of reconnoitering as there are to-day. At present with the network of railways, tramways, multitudes of roads and canals in all directions, one can easily ascertain one's position and find one's way everywhere, even in the desert or in mountainous country. The topographical maps are excellent. Each officer and even each sergeant in charge of a patrol can have one. We are therefore not dealing with this question from a technical point of view but from the point of view of what is moral and right, which is even more serious.

The situation of an inhabitant of an occupied country is not very different from that of a paroled prisoner. He still enjoys relative freedom but he does not dare to cross certain barriers: geographical barriers and moral barriers. He remains in the country, he sees all that happens, but woe to him if he ever opens his mouth. He would be immediately brought before a war council which knows only the penalty of death. And do you think it right that this same man, upon whom the enemy imposes the obligation of silence regarding the movements and situation of the occupying army, should be forced by this same enemy to communicate the movements of his countrymen or any other important information concerning them? In my opinion this would be immoral in the highest degree. That cannot become law. It is not for us to create an incubus.

Let us consider well what fatal position we would reserve to these unfortunate inhabitants. Our penal code in Article 102 punishes treason by life imprisonment, the death penalty having been abolished. In France a punishment just as severe attends this crime, as in many other countries. Therefore, on the one hand, if he betrays his country he will be guillotined, hung or imprisoned for life; on the other hand, if he refuses he will be shot.

It is to prevent these grievous conditions that I have submitted my proposition to the subcommission. Major General YERMOLOW, whose rare talents, indefatigable zeal and humanitarian tendencies I had occasion to appreciate last year at the Geneva Conference, has said that no one will demand forced services when it is possible to obtain volunteers for them and that in most cases it will be possible to find out all that is desired to know for money. In this I agree with

him. It will therefore be only as an exceptional case that recourse will be had to this monstrous threat.

Moreover, it will be an exceptionally rare case when one finds oneself in a country that has never been mapped. I ask then if it is necessary to abandon a good rule for the exception or if it should be laid down that the exception takes precedence of the rule?

Colonel Borel requests the floor in the name of the Swiss delegation; he cordially supports the proposition of the majority of the committee of [125] examination, as much from a military point of view as from that, more general and not less great, of the task laid out for the Conference of 1907 for whose realization the Second Commission seeks like the others, being inspired by the great and magnanimous sentiment to which we already owe the First Conference of 1899.

In this work, he says, we must subordinate the simple and easy things of a military order so that we may fix our attention upon the absolute necessities of war. Without denying the force of the arguments presented by the minority of the committee of examination, we can state in this regard that two great military Powers: Germany, through its proposition, France through the authorized voice of her military delegate, sacrifice the reservation recommended by the Austro-Hungarian delegation and thus recognize that if absolutely necessary one can do without the services of guides when it would not be possible to procure them otherwise than by compulsion. To renounce thus forced assistance of the population in military operations is to be in process of an evolution whose final expression is found in Article 46 of the Regulations of 1899, and which condemns the appeal to such assistance not only because it is in itself inhuman, but also because from a military point of view the result is of little or no significance.

To-day more than ever everything in war rests on that fundamental and supreme factor, the intellectual and moral force of man.

Consequently, it follows that volunteer service only produces good results and the employment of force yields bad results.

That is true particularly in the matter of the employment of guides, for a measure of this kind realized by means of compulsion is always aleatory; it may become dangerous for the one who has recourse to it; it will be easily replaced to-day by maps, reconnaissance, etc.

Moreover, have not the Regulations of 1899 already decided the question raised by the reporter of the committee of examination, as well as that of the other services referred to by Major General YERMOLOW? They have done so with a clearness which leaves nothing to be desired and we must take care not to obscure them in any way.

They already forbid (Article 44) forcing the population of an occupied territory to take part in the military operations against its own country.

They admit requisitions in kind and services (Article 52) only *for the needs of the army of occupation* as was just now recalled, and take care to add that these requisitions and services *are not to involve the population in the obligation of taking part in the operations of the war against their country.*

And therefore, says Colonel BOREL, the sentiment to which I referred but a moment ago and which must inspire our labors, has been respected by our predecessors of 1899 in terms which in a wholly general way forbid already the employment of force to obtain services such as those of a guide against his own country.

It cannot be argued that such service is not armed and therefore is less serious than armed service.

The Regulations of 1899 condemned the act of treason on the part of an individual against his country, an act of which the signatory States have forbidden the compulsion, and in this regard it is an incontestable fact that in guiding the enemy an individual may do infinitely more serious harm to his country and thus commit a greater crime than if he were to fight in a line of riflemen or artillerists.

To sum up, the principle contained in Article 44 of the Regulations must be kept intact and it is fitting that we should adopt the German proposition which purely and simply extends its application to the *ressortissants* of the enemy State outside of the territory of this latter occupied by the adversary.

[126] The Swiss delegates will accept the Netherland proposition but they do not wish it to have the effect of causing any doubts to arise as to the principle already established by Article 44 of the Regulations, a principle which forbids the belligerents to require of the population of the enemy State any act whatsoever connected with the military operations.

Major General Amourel takes the floor:

The Austro-Hungarian delegation, he says, in making known the motives of its amendment to the proposition of the German delegation, clearly indicated that its purpose was to put an end to certain obligations implicitly contained in the 1899 Regulations and in the text to be substituted therefor, and to prevent an international convention from containing provisions to which the commanders of armies would not conform.

The French delegation render full homage to the perfectly loyal intentions which have suggested the amendment of the Austro-Hungarian delegation. It would certainly be sorry to adopt here rules which could not hereafter be observed. But is such a contingency really to be feared? In the present case the execution will be the duty of the military commanders whose first duty is obedience to orders received and to the rules published in their armies. And it cannot be supposed that they would fail in this respect if their Governments had pledged themselves and had introduced into their military regulations the obligation of keeping this pledge.

The French delegation therefore accepts in full the text proposed by the German delegation. The latter in giving a formula in conformity with the spirit of Article 44 of the Regulations of 1899, after the exchange of views occasioned by the wording of this article, doubtless meant to show that it would no longer consider as intangible the right of a military commander to force a *ressortissant* of the adverse party to serve as his guide in an operation of war directed against his own country, that is to say, to take part therein.

If such is the point of view of the German delegation we are absolutely in accord with it. In fact we consider that with the means of getting information which the Powers possess at all times, with the maps and the information with which they do not fail to supply themselves, with the communications which they have been able to establish over the theater of operations, finally, with the possibility they have of finding volunteer guides with or without pay, the use of forced guides constitutes a useless violence in contradiction with the very spirit of the Regulations of 1899.

We think, moreover, as his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL has said, that the use of forced guides may be dangerous for

him who has recourse to them. One is never sure that the fear of death will lead a citizen to betray his country. And if a troop is entrusted to him may he not lead it to destruction?

The French delegation would be glad if all the other delegations would agree that the use of forced guides shall be henceforth forbidden. It will vote for Article 22a proposed by the German delegation and for the new Article 44 proposed by the Netherland delegation which implicitly sanctions this prohibition.

The President having proposed to defer the rest of the discussion until the next meeting on account of the late hour, his Excellency Count Tornielli expresses the opinion that the discussion of the German Article 22a and the amendments referring to it seems to be exhausted. He proposes therefore that if it is not desired to vote on it to-day the discussion be declared closed.

[127] The President also considers the discussion as completed; but he believes it best to bring it up again next Wednesday; he proposes to submit to the subcommission a new text combining Article 44, the German proposition, and that of his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL. (*Compliance.*)

His Excellency Baron Guillaume reads a draft declaration presented by the Belgian delegation¹ prohibiting for a period of five years the dropping of projectiles and explosives from balloons.

The President announces that this project will be printed and distributed as soon as possible, and adjourns the meeting at 5 o'clock.

[128]

Annex

REVISION OF THE CONVENTION OF 1899 RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

REPORT MADE IN THE NAME OF THE COMMITTEE OF EXAMINATION²

The committee of examination of the first subcommission of the Second Commission, constituted at the meeting of July 10, 1907, met on July 13 at eleven o'clock in the morning, under the presidency of his Excellency Mr. A. BEERNAERT. Those present were their Excellencies Messrs. BRUN, SAMAD KHAN MONTAS-ES-SALTANEH, BELDIMAN, CARLIN, Major General VON GÜNDELL, Major General Baron GIESL VON GIESLINGEN, Reporter, Major General AMOUREL, Major COCKERILL (replacing Lieutenant General Sir EDMOND R. ELLES), Major General YOSHIFURU AKIYAMA, Lieutenant General Jonkheer DEN BEER POORTUGAEL, Major General YERMOLOW.

The meeting was devoted to the examination of the amendments proposed by various delegations to several articles of the Regulations of 1899 respecting *the laws and customs of war on land*.

¹ Annex 18.

² See also the reports to the Commission, *ante*, Second Commission, annex to the second meeting, and to the Conference, vol. i, p 93 [96].

(1) ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

The delegation of Japan proposed the addition of a new Article 13a thus worded:

The *ressortissants* of a belligerent, inhabiting the territory of the opposing party, shall not be interned unless the exigencies of war make it necessary.

The President sets forth the grave disadvantages that would arise from the adoption of this text which implies the belligerent's right to intern inhabitants even *en masse* without trial and without established grievances.

We must therefore guard against misleading public opinion as to the tendencies of the present Conference by seeming to aggravate or invalidate the principles sanctioned in 1899.

[129] After an exchange of views between Major General von Gündell and

Major General Amourel on this subject, Lieutenant General Jonkheer den Beer Poortugael recalls that the case contemplated by the amendment had never occurred in Europe and that examples of it were found only in the wars of the Transvaal and Cuba.

The President adds that the question of the internment of a civil population would lead to a whole process of regulations. On what would the interned live? Who would take care of the property they would leave in their homes?

The majority having agreed to these considerations the committee declares this amendment rejected.

(2) ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay (*complément de la solde*) allowed them in this position by their country's regulations, the amount to be refunded by their Government.

The Japanese proposition tends to modify this article as follows:

The Government will grant, if necessary, to officers who are prisoners in its hands, a suitable pay, the amount to be refunded by their Government.

Major General von Gündell explained that his Excellency Mr. KEIROKU TSUDZUKI had justified this amendment by the necessity of determining the meaning of the word "*complément*" and by the difficulty of obtaining in war times exact information on the subject of pay.

Major General Amourel recognized that it is very difficult indeed to know in such a case what pay an officer receives from his country, and he set forth besides how necessary it is that the treatment granted him should be in accord with the material conditions of life in the country where he is in captivity.

He indicated, moreover, that the full pay (*complément de solde*) contemplated by the article in question is especially applicable to French officers to whom the regulations assign, when they are prisoners, a treatment inferior to their normal treatment.

Major General **Yermolow** stated in his turn that the meaning of the word "*complément*" could be explained by the difference which exists in Russia between the pay of rank, which affects only officers who are prisoners, and the pay of duty. In his opinion it is indispensable to suppress in the 1899 text the words "if necessary" and to accentuate the imperative character of the article by saying "shall receive" instead of "may receive." This suggestion having been approved by Major General **Amourel** in view of its not lessening the obligatory force of the article, Major General **Yoshifuru Akiyama** nevertheless insisted on the retention of the words "if necessary" appearing also in the Japanese text and which had been introduced there in order to prevent an officer from receiving double pay from his Government and from the captor Government.

Major General **Yermolow** and his Excellency Mr. **Carlin** having recalled that the decisions of the Conference for the revision of the Geneva Convention of 1906 relating to the pay of the medical personnel when prisoners could furnish a useful precedent, it appeared desirable to the committee that the present Conference should adopt the same method in view of the unity to which all discussions of this same subject should lead.

[130] The principle admitted at Geneva (Chapter 3, Article 13) is, besides, in conformity with the ideas advocated by the different members of the committee and is to the effect that the pay shall be equivalent to that of officers of the same grade in the army of the captor State.

Article 13 as voted at Geneva is thus worded:

ARTICLE 13

While they remain in his power, the enemy will secure to the personnel mentioned in Article 9 (personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, etc.) the same pay and allowances to which persons of the same grade in his own army are entitled.

The **President** declares that agreement seems to be established and proposes that the committee establish it undeniably by putting the officers who are prisoners on the same footing as those of the captor State, without leaving to the latter an indefinite latitude which might give rise to difficulties; he proposes the following formula:

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its army are entitled, the amount to be refunded by their Government.

The committee, with the exception of the delegate of Japan, concurring in this text it is submitted to the Commission.

(3) ARTICLE 22a

The new Article 22a proposed by the German delegation is worded thus:

It is forbidden to compel *ressortissants* of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

This would involve the suppression of Article 44 now in force and worded as follows:

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

On the other hand, an amendment proposed by the delegation of Austria-Hungary to the new text consists in inserting after the words "to take part" the words "as combatants."

The President having criticised the suppression of Article 44 on account of the place it occupies, Major General von Gündell states that he does not insist upon the place to be given to the new text in the Regulations provided that the principle admitted in 1899 relative to the participation of the population of occupied territory in military operations against its country be extended.

Major General Amourel explains the meaning of the new text so far as it concerns soldiers of the foreign legion, and declares that he cannot do otherwise than support it; soldiers retained by force in the ranks of an army can be for the latter only an element of weakness.

He feels it his duty to object to the addition proposed by the delegation of Austria-Hungary, which would permit the employment of the *ressortissants* of the hostile party as guides and the adoption of which would constitute in his eyes a reversal of the general terms admitted in 1899. The use of forced [131] guides, he added, is no longer indispensable, with the means of information now at the disposal of the armies and "besides, such guides are often more dangerous than useful for those who employ them when they are recruited in a patriotic and fanatic population."

The President and his Excellency Mr. Carlin likewise declare themselves opposed to this addition.

Major General Baron Giesl von Gieslingen insists upon the necessity of ensuring the march of the armies in mountainous countries, such as the Balkan peninsula whose passable roads do not figure on any map.

Major General Yermolow supports the proposition of the Austro-Hungarian delegate, his opinion being based especially on the operations of the Turkish war in which he took part.

The majority of the committee oppose the amendment asked for, and the German text is adopted in full save for a slight correction of form, replacing the words "if they were enrolled in its service" by the words "if they were in its service."

(4) ARTICLE 23

The German delegation proposed to add the following new paragraph (*h*):

(It is especially forbidden) to declare abolished, suspended, or inadmissible in a court of law the private claims of the *ressortissants* of the hostile party.

A proposal of Major General Yermolow asking that an amendment be introduced permitting in certain cases during the war the seizure of credits or documents belonging to the enemy which might assist in the continuance of hostilities, is not admitted, and the above text is adopted.

(5) ARTICLE 35

An amendment of his Excellency Lieutenant General Jonkheer den Beer Poortugael, consisting in the addition of the following new paragraph:

The capitulation to the enemy of an armed force is not obligatory for the detachments of that armed force which are separated from it by such a distance that they have preserved a liberty of action sufficient to continue the struggle independently of the main body,

is considered by the committee as dealing with a question which comes under the internal regulation of each country, and its author therefore withdraws it.

(6) ARTICLE 44

The suppression of Article 44 proposed by the German delegation as a consequence of the adoption of the new Article 22*a* brings the committee again to the discussion of the amendment to this Article proposed by Major General Baron GIESL VON GIESLINGEN.

Major General Yermolow, who supports this amendment, declares that he would find the maintenance, pure and simple, of the 1899 texts preferable to the adoption of the new Article 22*a* without the amendment relative to non-combatants.

The President calls attention to the cruelty of compelling the inhabitants of a country under pain of death to become traitors to their fatherland, [132] by leading an enemy army or by erecting its fortifications. On the other hand the necessities of war are invoked, it being at the same time recognized that they must always be mitigated as far as possible conformably to the principles of humanity inspiring all civilized nations; but since these necessities are in certain cases unavoidable it would therefore be more loyal to sanction them.

On the proposal of his Excellency Mr. Carlin the President submits to a vote the new Article 44*c* presented by Lieutenant General Jonkheer den Beer Poortugael and thus worded:

It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defense of their country.

This proposition is carried by a vote of 7 to 6 and it is decided that it shall replace old Article 44, carried over to the first chapter (means of injuring the enemy) under the number 22*a*.

The amendment of the Austro-Hungarian delegation is then rejected by a vote of 11 to 2.

The President remarks that these votes indicate only a principle and have in view the enlightenment of the subcommission on the results of the committee's discussion.

(7) ARTICLE 45*a*

The proposition of his Excellency Lieutenant General Jonkheer den Beer Poortugael consists in having Article 45 followed by an Article 45*a* worded thus:

It is forbidden to punish an inhabitant of an occupied territory by death without a sentence of a war council.

This sentence must be sanctioned before it is executed by the commander in chief of the army.

The President calls attention to the fact that contrary to the idea of its author, this new text would seem to controvert the principles admitted in 1899

according to which the lives of inhabitants must always be respected, and Major General Amourel adds that summary executions are not even permitted in dealing with spies.

In the presence of these observations his Excellency Lieutenant General Jonkheer den Beer Poortugael declares his amendment withdrawn as being superfluous on condition that the report of the committee should thus qualify it in mentioning the reason for its withdrawal.

(8) ARTICLE 46

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

The amendment proposed by the delegation of Austria-Hungary is thus worded:

Family honor and rights, the lives of persons, religious convictions and practice, as well as *in principle* private property, must be respected.

The President considers the first text much better, the addition of the phrase "in principle" before the words "private property" seeming to express a reversal of the ideas admitted in 1899.

[133] Major General Baron Giesl von Gieslingen does not insist; the delegation of Austria-Hungary had not meant to nullify the intent of the present text but only to modify its wording by reason of the restrictions contained in the following articles, especially Article 53.

The proposition of the Austro-Hungarian delegation relative to Article 46 is therefore withdrawn.

(9) ARTICLE 53 (*Amendment of the Austro-Hungarian delegation*)

The proposition of the same delegation relative to Article 53 tends to replace the second paragraph by the following provisions:

Railway plant, telegraphs, telephones, steamships and other vessels, vehicles of all kinds, in a word, all means of communication operated on land, at sea and in the air for the transmission of persons, things and news, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

His Excellency Mr. Carlin recalls that in 1899 the Swiss delegation had objected in principle to this enumeration and he declares that he must consequently vote against this still more extensive proposition. His Excellency Mr. Beldiman announces that for his part he would follow the precedents of 1899 by supporting it and voting for it.

Major General Yoshifuru Akiyama having asked that the words "at sea" be eliminated, this phrase appearing to him to be out of place in the Regulations respecting the laws and customs of war on land, General Amourel remarks that maritime cables play a rôle in the operations of war on coasts on account of their points of landing of which the belligerent may seek to take advantage.

When put to a vote this amendment secured all the votes except two, those of his Excellency Mr. CARLIN and Major General YOSHIFURU AKIYAMA.

(10) ARTICLE 53 (*Amendment of the delegation of Denmark*)

This amendment consists in inserting at the end of the 1899 text the following provisions:

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

In the course of the exchange of views to which the proposed new text gave rise, the majority of the members of the committee proved to be favorable to it, with the exception of his Excellency Mr. CARLIN, who abstained as the question did not directly interest Switzerland, and Major General AKIYAMA. Captain Cockerill recalls that at the time of the discussion of this proposition in the meeting of the first subcommission, on July 10, his Excellency Lord REAY had asked for its adjournment. As a consequence he believes it proper to refrain at present from any discussion.

The committee confines itself therefore to a preliminary examination.

[134]

(11) ARTICLE 57

The same applies to the Japanese proposition relative to Article 57 introducing two new articles in the Regulations of 1899:

ARTICLE 57a

Officers or other members of the armed forces of a belligerent, interned by a neutral State, cannot be set at liberty or authorized to reenter their country except with the consent of the adverse party and under the conditions stipulated by it.

ARTICLE 57b

A parole given to a neutral State by the persons mentioned in Article 57a shall be deemed equivalent to one given to the adverse party.

The discussion of this proposal was likewise referred on July 10 to the next meeting of the subcommission.

Several members of the committee consider these two amendments superfluous.

[135]

FOURTH MEETING

JULY 31, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 3:15 o'clock.

The President asks if there are any observations on the minutes of the last meeting.

His Excellency Mr. Hammarskjöld presents a reservation on the passage¹ dealing with the final remarks of his Excellency Count TORNIELLI in the matter of prohibition of measures of expulsion *en masse*:

It would seem to result from this passage, he says, that the Assembly had adopted by tacit consent the point of view that these expulsions are forbidden. This prohibition might lead even in times of peace to consequences which seem to me to depart from the outline of our labors and the acceptance of which would exceed my powers. I am therefore obliged to declare that I do not feel myself bound by the statement mentioned in the minutes.

The President acknowledges the observation of the first delegate of Sweden, which will be recorded in the minutes of the present meeting, and declares the minutes of July 24 adopted.

The program calls for the continuance of the examination of the German, Austro-Hungarian and Netherland propositions concerning the present Article 44 and the new Article 22.²

In our last meeting, says the PRESIDENT, you unanimously approved the German proposition in its double object: Extension of the prohibition of Article 44, which concerns only the nationals of the adverse party, to all its *ressortissants*, even in the case where they may have been in the service of the enemy before the war. But it was understood that the question of the place to be given to this article was formally reserved and that the drafting committee would be consulted on this subject.

The new text can therefore appear either as Article 44 in the place now occupied by the latter, or as Article 22 as the German delegation proposes, or it can occupy quite another place.

[136] No decision has been made either on the Austro-Hungarian amendment, which restricts the services which may not be required of nationals henceforth to services of *combatants*, or on the Netherland proposition bearing on a new Article 44a thus worded: *It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defense of their country.*

The two propositions are antipodal but they depend on the same question of principle and have been discussed at the same time. I believe, with many of you,

¹ *Ante*, p. 114 [118].

² Annexes 2, 3 and 4.

that everything that is to be said on this subject has been said, but I had announced that I would propose a wording, perhaps more precise, which would combine Article 44 with the Netherlands proposition. This proposition has been distributed among you¹ and I shall now read it to you:

AMENDMENT TO THE REGULATIONS RESPECTING THE LAWS
AND CUSTOMS OF WAR ON LAND

Replace Article 44 (whatever the place to which it may be assigned) and Article 44a proposed by the delegation of the Netherlands, by the following text:

- It is forbidden to force the inhabitants of occupied territory to take part personally, either directly or indirectly, collectively or individually, in military operations against their country and to demand of them information in view of such operations.

As on my part I have no intention of reopening the discussion on this subject, I believe I can keep the chair, but I shall permit myself to explain my idea in a few words.

My text preserves to their full extent the prohibitions contained in Article 44, but in place of the word *population* which might lead to some ambiguity, I say that we cannot force the *inhabitants* (which corresponds to the *ressortissants* of the German proposition) to any participation, direct or indirect, collective or individual. As to the meaning of the words *military operations*, there can be no doubt. They refer not only to the act of carrying arms and fighting, but to all personal cooperation demanded of the inhabitant against his country, works of fortification, strategic routes, and above all the requisitions, under threats, of guides or information, that is to say, acts of felony contrary to honor and endangering life. But the text that I propose indicates at the same time that aside from the personal act which cannot be demanded, no innovation is made as to the right of the belligerent to claim by way of requisitions whatever he needs, a right regulated by Article 52.

These explanations seem to me to suffice, but I cannot resist the desire to refer you in support of my opinion to some very recent authorities: MÉRIGNHAC in the *Revue générale de droit international* of March-April, 1907, and BONFILS in his *Manuel de droit international* (No. 1145), severely censure the practice of condemning inhabitants to serve as guides under threat of death, and add:

He who guides the invading army commits an act more harmful to his country than if he fought in the ranks of the enemy.

The manual used by French officers, which seems to consider the requisition of guides as a sort of right, adds that "the person obliged to guide or to facilitate the expeditions of the enemy feels cruelly outraged in his patriotism" (p. 110).

And here is what bears on this subject in the Declaration of Brussels, from which the text of Article 44 of the 1899 Convention was borrowed, and in the Manual agreed upon at Oxford by the Institute of International Law (Article 48, paragraph 2):

[137] The inhabitants cannot be compelled to take part in any way whatsoever in the military operations.

¹ Annex 14.

And Mr. BONFILS, after having recalled these rules, adds:

The occupant cannot levy recruits among them, compel them to fight, put them in the trenches, or employ them in works of attack or defense, etc.

The inhabitants cannot be compelled by force or intimidation to furnish useful information in the war against their country, to betray its secrets, to give the meaning of certain signs, etc. Such acts constitute the crime of treason and are repressed by the laws of all States. (Bonfils, *op. cit.*, Nos. 1143, 1144.)

It is certain that the inhabitant who has betrayed his country, even though compelled to do so, may be executed by his own troops.

And how can we reconcile a situation, which exposes him equally on both sides through no fault of his own, with the provision which solemnly guarantees to him life, liberty and honor?

Permit me to call attention again to the new character which the requisition of a guide by the enemy would take if it were made henceforth by virtue of a world convention. It would no longer be a question of an act of force, of an act of violence explicable if not justifiable by a situation which would admit of no deliberation. Each of our countries would admit by a solemn act that its children could be required to inflict upon it perhaps a mortal blow. (*Applause.*)

But I am discussing the question, and I ask pardon of the Assembly.

Does anyone wish to speak?

Major General Yermolow reads the following declaration:

In view of the declaration that my honored colleague from Germany, Major General VON GÜNDELL, made in the preceding meeting respecting the new Article 22a proposed by the delegation of Germany in order to extend to all enemy *ressortissants* the prohibition already contained in Article 44,—the delegation of Russia is desirous of declaring that it wishes to propose a conciliatory solution and that it naturally has no objection to the meaning of Article 44 being thus extended to all the *ressortissants* of the adverse party, as well in the territory occupied by the invading army as outside of this territory.

The objections of the Russian delegation were not made on that point and it thinks that there is perhaps a very simple means of reaching an agreement, to wit—if the delegation of Germany is willing to consent to it,—in the following manner:

We would propose to leave Article 44 in its present form and in the same place that it occupies in Section III of the Convention. As to new Article 22a we would suggest placing it not in Chapter I (means of injuring the enemy) of Section II, where it might give rise to a certain ambiguity, but outside of this chapter although in the same section, creating for this article, for example, a new chapter which might be entitled: "*Ressortissants* of a belligerent in the territory of the adverse party."

Indeed, gentlemen, I call the attention of the Commission to the fact that Chapter I of Section II regulates only the relations between the two belligerent armies and that consequently new Article 22a, which brings up an entirely different question, to wit, that of the relations of belligerent A with the *ressortissants* of belligerent B in the territory of belligerent A, can certainly have no place in Chapter I. But if the German delegation consented to place this new

[138] article outside of this chapter in the same Section II, while leaving Article 44 intact in its present place, the delegation of Russia would no longer have

any objection to accepting Article 22a without even adding to it the amendment of the Austro-Hungarian delegation.

Major General von Gündell declares that the German delegation willingly accepts the proposal of the military delegate of Russia.

It does not insist on the place to be given Article 22a and sees no inconvenience in its appearing elsewhere than between Articles 22 and 23, or in the maintenance of Article 44.

Major General Baron Giesl von Gieslingen reads the following declaration:

The Austro-Hungarian delegation cannot accept in full the Belgian proposition, and is especially opposed to the adoption of the last phrase of this project: "and to demand of them information in view of such operations." It gives the following reasons for its attitude:

The clause "It is forbidden to force the inhabitants of occupied territory to take part in military operations against their own country" already exhausts, according to us, all the possible restrictions to which a military commander could be subjected in his relations with the population of occupied territory.

To formulate in this regard still more restrictive stipulations would compromise in a scarcely justifiable manner the freedom of action of troop commanders without increasing the protection of the inhabitants of occupied territory, a protection which is guaranteed by the conventions of international law.

The question of forced guides, already so often discussed, pertains also to this subject.

The commander of a troop finding himself, for example, under the necessity of requiring an inhabitant of the occupied country to serve him as a guide, will certainly demand that this individual not lead him into that part of the country occupied by an enemy force.

Now, such service, which a military commander will often be forced to demand, would certainly come under the category of acts contemplated by the new Article 44.

It is natural, moreover, that military chiefs should on many occasions, and in order to complete their intelligence department, appeal for information which can be furnished them either by prisoners of war or by some inhabitant of the occupied country, and we believe that this means of completing the reconnaissance cannot be relinquished.

Besides, the subject seems to have to do essentially with internal military procedure.

So long as there are wars—and the labors of this subcommission foresee this sad eventuality—one cannot refuse to troops the means of accomplishing their duties.

The existence and the fate of a body of troops, composed of several thousand men, seems to us to merit at least as much consideration as the conscience of a peasant under interrogation,—a conscience which will be easily tranquilized by the compulsion under which its possessor acts.

We cannot concede the dilemma of which his Excellency Lieutenant General DEN BEER POORTUGAEL spoke in one of the preceding meetings.

When one yields to superior force he cannot be accused of failing in a patriotic duty, and his guilt is not established by any code if his offence has been committed under the domination of an irresistible compulsion.

It is for these reasons that the delegation of Austria-Hungary opposes the

last phrase of the amendment proposed by the delegation of Belgium, and would prefer in this case that the present stipulations of Article 44 be preserved.

[139] As to the proposition just now made by the military delegate of Russia, General YERMOLOW, we are ready to accept it if there is no possibility of adopting the Austro-Hungarian amendment.

Captain Sturdza explains in the following terms the reasons which prevent the delegation of Roumania from adhering to the Belgian proposition which seems to it to limit more than is proper the means of the belligerents.

We recognize the necessity of respecting the legitimate sentiments of the inhabitants of an occupied region; there should be no question of enrolling them as combatants against their own country. But so far as concerns the *indirect* services which they could be called upon to render and which are likewise included in the Belgian proposition, the stipulation appears to go too far.

My reasons for making this statement are as follows: It is not expedient to neglect during the operations of war the immediate necessities of second line services, I mean services connected with trains, columns, communications, rations, fortification works and others; these services involve a large personnel; it is necessary therefore to demand all the personal means found in an occupied region; this need is imperative for upon the proper fulfilment of these services (precisely specified in the terms of the Belgian proposition) depends the success of the operations, properly speaking.

We believe that it is impossible to observe restrictive provisions such as we have before us and that they are therefore useless; as I have just explained, the course of operations would be fettered by such limitations. The commanders responsible for the success of the operation would be placed in the position of choosing between the imperative duty and needs of the moment and obedience to the rather theoretical rule proposed. In general, one should avoid contracting obligations when it is foreseen that it will scarcely be possible to respect them.

Indeed, contrary to what is easily supposed in a peaceful study, many commanders would free themselves from the strict observance of laws which do not take sufficiently into account the nature of war, which will not be changed as long as it exists.

I add that the Belgian proposition does not present a sufficiently general character as to be applicable to all situations and all the countries of the world: for instance, what can be done in Belgium, Switzerland, the Netherlands or in the Scandinavian kingdoms would not be applicable in countries of another geographic and political situation or of another topographical configuration.

But our principal reason for desiring to retain the old Article 44 of the Regulations respecting the laws and customs of war on land is as follows:

We know that our commanders are ready to sacrifice their lives for their country and that they risk, when it is necessary, that which is even dearer than life,—their honor and good reputation; we cannot, therefore, paralyze, by rules inapplicable in practice, their means of action.

On the contrary, we should avoid manifesting by too great limitations a marked distrust of the signatory Powers with respect to their own officers; we may have confidence that these officers will themselves be able to judge how far their warlike energy should go and where pity and justice should draw the line.

We believe, moreover, that we are not alone in this opinion.

We regard war as one of the greatest calamities which can burst upon a

country, and we are cooperating with enthusiasm in the great humanitarian task to which this Conference is summoned.

[140] But at the same time we should not conceal from ourselves the fact that, war having once become inevitable, the inexorable necessities of the moment impose themselves in such a fashion that they often defy rules whose impracticability can be foreseen at the present moment.

We regret therefore that we are unable to adhere to the Belgian proposition, and we desire to preserve Article 44 of the old Regulations in its present form.

Major General **von Gündell** declares that in view of the text proposed by the delegation of Belgium he joins in the sentiments expressed by the military delegate of Austria-Hungary. According to him, all that can be required of a military commander in his relations with the population of an occupied territory is already stated in Article 44. The limitations created by the Belgian proposition appear to him not only useless but harmful, and under these conditions the German delegation cannot adhere to this proposition.

Major General **Amourel** recalls that he has already announced that the French delegation would adhere to the German and Netherland propositions which implicitly forbid the use of forced guides. He adds that if the Belgian proposition is substituted for the Netherland proposition the French delegation will accept the Belgian wording in full, attributing to it the same significance.

Colonel **Ting** adheres in the name of the delegation of China to the Belgian proposition and accepts it in preference to Article 44.

His Excellency **Réchid Bey** observes that the Belgian proposition provides only for the case of forced services, but it seems to him that the prohibition cannot be applied to services offered voluntarily and without compulsion.

The **President** replies that there can be no doubt on this point. To accept and to demand are two entirely different things.

He recalls again that the so-called Belgian proposition is only a new wording combining Article 44, more precisely stated, with the German amendments already admitted in principle and the Netherland amendment.

He asks the delegate of the Netherlands if he accepts the new wording proposed; the latter replies in the affirmative.

He remarks to the military delegates of Russia and Germany that the agreement which they have just announced does not solve the questions raised by the amendments of Austria-Hungary and the Netherlands, and that the question which seems to interest them especially, that of the place to be assigned to the article, is in no wise determined. This point has been referred to the consideration of the drafting committee and the **PRESIDENT** invites them to communicate to it their various observations.

He proposes then to put to a vote the wording proposed by the delegation of Belgium.

His Excellency Count **Tornielli** observes that it is well understood that to vote against this amendment will be to vote for the maintenance of Article 44, which is approved.

Colonel **Borel** declares that the vote on the Austro-Hungarian proposition must remain reserved.

Thirty-three delegations take part in the vote.

Voting for: Belgium, Brazil, Chile, China, Cuba, Denmark, Dominican

Republic, Spain, France, Greece, Luxemburg, Norway, Paraguay, Netherlands, Serbia, Siam, Switzerland, Venezuela.

[141] *Voting against:* Germany, United States of America, Austria-Hungary, Bulgaria, Great Britain, Haiti, Italy, Japan, Montenegro, Panama, Portugal, Roumania, Russia, Sweden, Turkey.

The Belgian proposition is adopted by a vote of 18 to 15.

The President states that the proposition adopted has yet to undergo the double test of examination by the committee and of a vote in plenary meeting.

An exchange of views occurs between him and Major General von Gündell on the question of the necessity of taking a subsidiary vote on the Austro-Hungarian amendment as an indication for the subcommission.

Major General Baron Giesl von Gieslingen considers a vote of no use since the delegation of Austria-Hungary has agreed to the proposition of Major General YERMOLOW, which furnishes a basis of agreement and has been referred back to the committee.

The President announces that there will therefore be no vote on this point. He reads the German amendment relative to Article 23,¹ which consists in adding to it a new paragraph *h* thus worded: (*It is especially forbidden*) *to declare abolished, suspended, or inadmissible the private claims of the ressortissants of the hostile party.*

This addition defines in clear terms one of the consequences of the principles admitted in 1899, and the committee of examination, believing that we should be as precise as possible, has fully approved it.

As no one opposes it the PRESIDENT declares the amendment unanimously adopted.

The PRESIDENT proposes, before proceeding to the examination of the other amendments, to make a slight modification in the text of Article 27 relative to sieges and bombardments in order to bring the text into harmony with what has been done in the Third Commission in regard to bombardments at sea; to the enumeration of the buildings which should be spared as far as possible in case of bombardment by sea, have been added *historic monuments* and the same should hold in case of war on land.

This proposition is greeted with applause and unanimously approved by the Assembly.

The Netherland amendment relative to Article 35² having been withdrawn and the question raised by Article 44 having been settled in a measure by the vote which has just been taken, the program calls for the examination of the Netherland amendment relative to Article 45a.³ The committee having expressed the opinion that this new article was useless, inasmuch as the non-belligerents are already protected against all abuse by other and more extended provisions, his Excellency Lieutenant General Jonkheer den Beer Poortugael declared that it would not be urged providing the reason for its withdrawal be recorded in the minutes, as will be done.

The assembly passes to the Austro-Hungarian amendment relative to Article 53,⁴ the amendment proposed by the same delegation to Article 46⁵ having been withdrawn by Major General Baron GIESL VON GIESLINGEN.

¹ Annex 2.

² Annex 9.

³ Annex 4.

⁴ Annex 7.

⁵ *Ibid.*

The additions that the delegation of Austria-Hungary proposes to introduce into the text of Article 53 concern *the means of communication operated in the air for the transmission of persons, things and news*, that is to say, especially the employment of balloons. The President declares the discussion opened.

[142] His Excellency Mr. Tcharykow requests permission to first make some observations on the subject of Article 52.

The provision relative to payments for contributions in kind contained in the third paragraph of Article 52, he says, is evidently inspired by the principle of immunity from confiscation of the private property of peaceful inhabitants of occupied territory which is expressly guaranteed by Article 46.

The delegation of Russia considers that in virtue of this principle and in the case where receipts are given by the enemy military authority for contributions in kind imposed by them—it would be very desirable to redeem these receipts as soon as possible from the peaceful population to which they have been given.

Indeed, this population, having been forced to make contributions in kind to the extent of exhausting all their resources, may find themselves without means to satisfy their most urgent needs. I might add that such an exhaustion of an occupied country would scarcely be to the advantage of the occupying army itself.

If this population were obliged to wait until the very end of hostilities before receiving the money due them for receipts given, they would inevitably and needlessly be exposed to excessive suffering which might be alleviated, were it only in part, if the commanders of the occupying military forces were authorized to pay for the receipts in question during the course of hostilities, and in such measure as possible.

In view of these considerations, the delegation of Russia has the honor to propose to complete Article 52 of the Regulations respecting the laws and customs of war on land by a provision in virtue of which commanders of military forces, when in occupied territory, would be authorized to provide as soon as possible during the continuance of hostilities for the redemption of receipts given for contributions in kind called for by the needs of the army of occupation.¹

The President asks if it is desirable to discuss this new proposition immediately or if it would not be better to refer it to the committee, as an impromptu discussion has little value.

His Excellency Mr. Tcharykow agrees on condition that the committee shall make a report.

Major General Yermolow proposes, in the name of the Russian delegation, the following amendment ² to the Austro-Hungarian amendment ³ relative to the second paragraph of Article 53:

After the words “vehicles of all kinds” insert the words “as well as teams, saddle animals, draft and pack animals.”

This amendment, he says, is proposed by us in accordance with the new Geneva Convention decided on last year, in Articles 14 and 17 of which mention is made of teams at the same time as vehicles.

Major General Giesl von Gieslingen accepts this amendment.

The question is referred to the committee of examination.

His Excellency Mr. Carlin asks if it would not be well to examine whether

¹ Annex 15.

² Annex 8.

³ Annex 7.

the provisions of Article 53 can be taken to apply to the property of neutral persons domiciled in belligerent territory. Although this question is included [143] in the program of the second subcommission in connection with the discussion of the German proposition relative to the treatment of neutral persons domiciled in the territory of the belligerent parties, it would seem necessary not to lose sight of the relation which exists between the provisions of Article 53 in this regard and those of the German project.

The **President** announces that this observation will not fail to be taken into consideration by the committee, to which it is referred without objection.

His Excellency Mr. **Keiroku Tsudzuki** fears that the addition of the words "*at sea*," proposed by the delegation of Austria-Hungary to the text of Article 53, so far as concerns means of communication, may lead to misunderstanding, as such a provision seems to him to trench upon the program of the Fourth Commission.

Mr. **Louis Renault** believes that the question should be referred to the committee of examination. He is not certain, in fact, that these words ought to be suppressed, for the right of maritime capture alluded to by the first delegate of Japan may not be applicable in land warfare in the case of ships seized in a port by a body of troops, especially as regards those destined for river navigation.

If the principles which govern the right of capture cannot be applied in such a case we should refer to Article 53.

The **President** says that these various observations will be referred to the attention of the committee.

The examination of the report of Major General GIESL VON GIESLINGEN then calls for the discussion of the Danish amendment¹ relative to the same article. These provisions have not as yet been discussed, his Excellency Lord REAY having asked that the question be reserved.

His Excellency Lord **Reay** declares that after a careful examination of this amendment the delegation of Great Britain has no objection to raise against its adoption, and will consequently vote for it.

The **President**, after having stated that this question likewise concerns the second subcommission, proceeds to take a rising vote on the Danish amendment which is adopted by a large majority.

He then submits for discussion the Japanese amendments relative to Article 57,² stating that if he understands the new Article 57*a* it might be asked if it would not be more in place in the project relating to the rights and duties of neutrals.

His Excellency Mr. **Carlin** agrees with the **PRESIDENT** and asks if it would not be preferable to discuss this question in connection with the debates on neutrals which likewise come within the scope of the program of the second subcommission.

The **President** asks if anyone opposes referring this amendment to the second subcommission.

His Excellency Mr. **Keiroku Tsudzuki** having declared that he had no objection, the **President** announces that it will be done; he also proposes to submit Article 57*b* to the second subcommission.

Mr. **Louis Renault** fears that there is some confusion. We are not dealing

¹ Annex 12.

² Annex 10.

here with neutral subjects but with neutral States upon whom obligations [144] are imposed concerning belligerents interned in their territory. For this reason this question would appear to be entirely in place in the Regulations of 1899.

The **President** remarks that it is not a question of a law of war but of obligations of neutral States. Moreover, the question seems to come within the province of the committee of examination.

This is also the view of his Excellency Mr. **van den Heuvel**, who thinks that the same applies to the following articles, and that if a new place is assigned to Article 57 the same should be done in the case of Articles 58, 59 and 60.

The **President** declares that the committee of examination will take this into consideration.

The **PRESIDENT** announces that since the formation of the committee of examination a new amendment has been deposited by the German delegation relative to indemnification for violation of the Regulations respecting the laws and customs of war on land.¹ This amendment is worded as follows:

ARTICLE 1

A belligerent party which shall violate the provisions of these Regulations to the prejudice of neutral persons shall be liable to indemnify those persons for the wrong done them. It shall be responsible for all acts committed by persons forming part of its armed forces.

The estimation of the damage caused and the indemnity to be paid, unless immediate indemnification in cash has been provided, may be postponed, if the belligerent party considers that such estimate is incompatible, for the time being, with military operations.

ARTICLE 2

In case of violation to the prejudice of persons of the hostile party, the question of indemnity will be settled at the conclusion of peace.

This proposition, which is very interesting inasmuch as it tends to give sanction to requirements which at present have none, is composed of two parts:

The first concerns neutral persons and declares that they must be indemnified for wrong done them by persons forming part of the armed forces of a belligerent State. There is right and obligation, but no right is stipulated for the wrong done "persons of the hostile party"; it is said only that the *questions* which concern them must be settled at the conclusion of peace. Perhaps it would be preferable to omit the words "the questions" or better to make only one article instead of two. I permit myself to suggest further that the wording might be slightly improved: "*persons of the hostile party*" is perhaps not very correct and the words "*may be postponed*" are very vague.

Major General **von Gündell** takes the floor and explains the German proposition as follows:

I shall take the liberty of stating in a few words the reasons for the German proposition, which aims to complete the Regulations respecting the laws and customs of war on land by the addition of provisions dealing with the case of infraction of the Regulations.

One might perhaps question the necessity of providing for such a case on

¹ Annex 13.

the ground that it is not to be doubted that the signatory Powers of an [145] international convention have every intention of conforming to the rules they have adopted.

I do not need to say that it has not entered our thoughts to question the good faith of the Governments. In fact, a rule governing the case of an infraction of conventional stipulations is out of the question if we are dealing with obligations whose execution depends upon the will alone of the Government. But this is not the case. According to the Convention respecting the laws and customs of war on land the Governments are under no other obligation than to give to their armed forces instructions in accordance with the provisions contained in the Regulations annexed thereto. Granting that these provisions must form a part of the military instructions, their infraction would come under the head of the penal laws which safeguard the discipline of the armies. However, we cannot pretend that this sanction is sufficient to prevent absolutely all individual transgression. It is not only the commanders of armies who have to conform to the provisions of the Regulations. These provisions are likewise applicable to all the officers, commissioned and non-commissioned, and to the soldiers. The Governments cannot therefore guarantee that the orders, which have been issued in accordance with their agreement, will be observed without exception during the course of the war.

Under these circumstances it is proper to anticipate the consequences of infractions which might be committed against the requirements of the Regulations. According to a principle of private law, he who by an unlawful act, through intent or negligence, infringes the right of another, must make reparation to this other for the damage done. This principle is equally applicable in the domain of international law and especially in the cases in point. However, we cannot hold here to the theory of the subjective fault by which the State would be responsible only if a lack of care or surveillance were established against it. The case most frequently occurring will be that in which no negligence is chargeable to the Government itself. If in this case persons injured as a consequence of violation of the Regulations could not demand reparation from the Government and were obliged to look to the officer or soldier at fault, they would fail in the majority of cases to obtain the indemnification due them. We think therefore that the responsibility for every unlawful act committed in violation of the Regulations by persons forming part of the armed force should rest with the Governments to which they belong.

In regard to the manner in which the responsibility, the importance of the damage, as well as the method of paying the indemnity shall be decided, a distinction must be made as to whether the violation has been committed to the prejudice of a neutral or of a *ressortissant* of the enemy State. In the first case the necessary measures should be taken to assure as prompt a reparation as is compatible with military operations. If, on the contrary, it has to do with a violation to the prejudice of an enemy subject, it appears indispensable to defer the settlement of the question of indemnity until the conclusion of peace.

His Excellency Mr. Tcharykow makes the following declaration:

The delegation of Russia approves the proposition of the German delegation. We feel that it answers the same interests of the peaceful population in time of war as we had in view in submitting our proposition just now to the assembly. Our proposition looks to the alleviation of the burdens imposed upon this popula-

tion in execution of the 1899 Convention. The German proposition anticipates the damage resulting to them from a violation of this Convention. The [146] considerations which inspired the two propositions are legitimate and just and, as such, should in our opinion be made the subject of an international agreement.

Mr. Louis Renault declares that without being formally opposed to the principle of the German proposition, he has some scruples on the subject of its text.

It is true, he says, in many cases the violation of international regulations results in serious harm to individuals who should be indemnified. But the text submitted to us presents the danger of being interpreted *a contrario* in the sense that in the cases not provided for the violation of international rules would not imply any obligation to repair the damage done.

Moreover, the German proposition brings up another very serious objection in that it may be considered as a direct sequel to the clear doctrine of the German delegation relative to questions of neutrality as stated in its proposition concerning the treatment of neutral persons, now being discussed by the second subcommission. This doctrine tends to establish a distinction between the *ressortissants* of the neutral States and those of the belligerents who reside on invaded or occupied territory, by endeavoring to create a privileged status for the first and by according them what has been called a premium on neutrality.

I repeat on this occasion that the French delegation can under no condition accept this doctrine and that it considers that measures taken for the protection of individuals should apply to all alike without any distinction between *neutral persons* and *persons of the hostile party*. It is this distinction that seems to be sanctioned by the text of the German delegation, since its Article 1 speaks only of injury done to the first, while the second are dealt with only in Article 2. Besides, it seems impossible in practice to establish such distinctions, for it is difficult to see, for example, how a commander, in making requisitions for the lodging of his troops on an occupied territory, could distinguish between houses belonging to neutral subjects or to *ressortissants* of the hostile party.

It is because I am somewhat afraid of the import of this Article 1 that I am anxious to call the attention of the subcommission to the danger which might result for the subjects of belligerents through the limitation to neutral persons of its prescriptions, which are very equitable in principle but which might be interpreted against them. It is inadmissible, indeed, to limit protective measures to neutrals, conformably with an idea, which I believe is coming to be recognized more and more by the modern rules of warfare, that all individuals not taking part in hostilities should stand on a footing of absolute equality, whether it be a question of protective measures or of rigorous measures.

Colonel Borel declares that the Swiss delegation adheres without reservation to the project presented by the German delegation. The principle which this proposition tends to establish is so just that it might be said to fill a genuine gap in the Regulations of 1899.

Speaking then of the objections raised by the delegate of France, Colonel BOREL observes first of all that to give the Regulations an international sanction which they have heretofore lacked assuredly does not involve the least infringement of the eventual rights of persons who might be injured by other acts than those forbidden in these Regulations. In this regard a simple

[147] observation in the minutes can suffice to prevent any doubt or misunderstanding.

As to the nature itself of the German proposition, it would be wrong to say that it creates an inadmissible privilege in favor of neutrals. The principle which it lays down is applicable to every individual injured, whether national of the enemy State or *ressortissant* of the neutral State. The only distinction established between these two categories of victims and, consequently, legally entitled persons, relates to the settlement of the indemnity, and the difference made between them on this point lies in the very nature of things. The settlement of indemnities due to neutrals can most of the time take place without delay for the simple reason that the responsible belligerent State is at peace with their country and continues with the latter peaceful relations which will permit the two States to discharge easily and without delay all cases presented. The same facility or possibility does not exist between the belligerents by the very fact of the war, and although the right to an indemnity arises in favor of their respective *ressortissants* as well as in favor of neutrals, the settlement of the indemnities between belligerents can scarcely be arranged and made effective until the conclusion of peace.

Major General von Gündell desires to thank Colonel BOREL for his remarks and declares that he himself could not better have defended his proposition.

Mr. Szilássy supports the German proposition in the name of the delegation of Austria-Hungary.

His Excellency Lord REAY explains his position on the question under discussion as follows:

I share the scruples just expressed by the honorable delegate of France, Mr. RENAULT, as regards this proposition. It seems to me to be inspired by the same consideration that dictated the German proposition which was submitted to the second subcommission of this Commission. In both propositions the neutrals are accorded a privileged position. I have been unable to accept this innovation for it aims at creating a privileged position for neutrals which heretofore has not existed, and for the same reasons that prevented me from giving the assent of the British delegation to the German proposition which we discussed in the second subcommission, I cannot accept the proposition now before us. Article 1 grants to neutral persons a right to claim indemnity from the belligerent party for the wrong done them, while Article 2 says that the indemnity shall be settled at the conclusion of peace as respects the persons of the hostile party. It follows from this that indemnification of these persons depends upon the conditions which will be inserted in the treaty of peace and which will be the result of negotiations between the belligerents.

I do not deny the obligation which exists on the part of a belligerent Power to indemnify those who have been victims of violation of the laws and customs of war, and Great Britain has no desire to avoid these obligations. I wish only to observe that it is often very difficult to determine this violation and the extent of the damage done. To proclaim the principle is easy, but it is very difficult to apply it without raising discussions injurious to the good relations of the States which must solve the problem.

Major General von Gündell replies to the observations of Mr. LOUIS RENAULT and his Excellency Lord REAY, and states that there is a misunderstanding as to the interpretation of Article 2 of the German proposition.

[148] The latter makes a difference between *neutral persons* and *persons of the hostile party* only as regards the method of paying indemnities.

Colonel Borel having stated that the question now at issue is largely one of wording, his Excellency Count Tornielli expresses the opinion that the interpretation of the text in discussion would be easier if in Article 2 the words "*the question of indemnity will be settled*" were replaced by the words "*the indemnity will be settled.*"

His Excellency Mr. Nelidow thinks that it would be preferable that Article 1 should not relate exclusively to neutrals but also to persons of the hostile party, for it is the separation of the two stipulations that leads to misunderstanding by creating a seeming inequality.

Major General Amourel supports the suggestion of his Excellency Mr. NELIDOW and believes it possible to reach an understanding by combining the two articles in one and replacing the words "*to the prejudice of neutral persons*" by the words "*to the prejudice of any persons whatsoever.*"

Under these reservations the French delegation could accept the text proposed.

The President declares that the observations just made on this subject will be taken into consideration by the committee of examination to which the question is referred.

His Excellency Lieutenant General Jonkheer den Beer Poortugael does not wish to let the discussion of the amendments concerning the Regulations of 1899 respecting the laws and customs of war on land close without explaining his reasons for not maintaining his proposition relative to Article 5. He makes the following declaration on this subject:

Now that we have examined all the propositions relative to the Regulations we are discussing, I wish to say why I have not made a proposition which I had at first intended to present.

I had intended proposing an addition to Article 5 to the effect that prisoners of war can only be put to death:

1. In case of resistance or attempt to escape;
2. After a sentence for crimes or acts punishable by death in virtue of the civil or military laws of the country that has made them prisoners.

But as Article 4 prescribes that they shall be treated with humanity, and as it would be ridiculous to maintain that they could be shot with humanity either for reprisal or because they are in the way, I believed that a renewal of the prohibition was entirely superfluous and that you would agree with me.

The President reminds the assembly that the work of the 1899 Conference was completed by three declarations under the jurisdiction of the subcommission. Two of them are still in force, those *prohibiting the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases*, as well as *the use of bullets which expand or flatten easily in the human body*.

The present Conference need not discuss them inasmuch as they have not been denounced by any of their signatories. As to the third declaration which concerns the *prohibition against throwing projectiles and explosives from balloons*, it was made for a period of five years and this term expired almost three years ago. This is why its renewal was included by Russia in the program of the Conference, and the delegation of Belgium has undertaken to move its readop-

[149] tion, stating it in the same terms as in 1899. The discussion is declared opened.

Major General Baron **Giesl von Gieslingen** asks that the question be reserved as the program of the meeting had not contained any notice of the discussion.

His Excellency Lord **Reay** supports the request of Major General Baron **GIESL VON GIESLINGEN**.

After an exchange of views on this subject between them and the **President**, the latter announces that the question will be included in the program of the next meeting.

The meeting adjourns at 5 o'clock.

FIFTH MEETING

AUGUST 7, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 3:15 o'clock.

On inquiry by the **President** no observations are made relative to the minutes of the preceding meeting; they are declared adopted.

The **President** announces that in accordance with the order of the day the discussion is opened on the Declaration of 1899 prohibiting the launching of projectiles and explosives from balloons. This Declaration, which had been made only for a period of five years, expired in 1904. The text presented by the delegation of Belgium,¹ restates it in the same terms, and it is this question that the subcommission has to decide.²

The draft declaration presented by the Delegation of Belgium is worded as follows:

The contracting Powers agree, for a term of five years, to forbid the throwing of projectiles and explosives from balloons or by other new methods of similar nature.

The present Declaration is only binding on the contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

Non-signatory Powers may adhere to the present Declaration.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

[151] His Excellency Count **Tornielli** announces that in case the Belgian proposition should not be adopted he reserves the right to make a subsidiary proposal.

His Excellency Mr. **Tcharykow** reads the following declaration:

Mr. **PRESIDENT**: The delegation of Russia desires to present on the question of launching projectiles or explosives from balloons or by the aid of other new

¹ Annex 18.

² Renewal of the Declaration, etc. See also *ante*, Second Commission, second meeting, pp. 14-15 [15-16].

methods of a similar nature, a proposition which it seems to us can command unanimous agreement.

Gentlemen, our proposition is this: We do not know,—and the years which have passed since the Declaration of 1899 have given us very little information on this point,—what military aviation, or, if you will, aerial artillery, may have in store for us. In any case it would seem that in the actual state of the technical development of these services the ability to damage the enemy by the aid of projectiles or explosives launched from balloons or by other similar means would scarcely be more formidable or more effective than it is by modern artillery on land or sea. But without touching these questions, a trifle premature and perhaps even a little imaginary, we could extract from the proposed prohibition one, which, in our opinion, might be permanently adopted, namely, a prohibition against throwing projectiles or explosives from balloons, etc., upon towns, villages, dwellings or buildings that are not defended. This prohibition, having a permanent character, could right now be inserted in the text itself of the Regulations respecting the laws and customs of war on land, and, without necessitating a special declaration, be introduced in the said Regulations as an integral part of Article 25 which already forbids the bombardment of unfortified places by cannon.

It might be worded as follows:

It is forbidden to bombard or attack, by artillery or by throwing projectiles or explosives from balloons or by the aid of other new methods of a similar nature, towns, villages, dwellings or buildings that are not defended and do not contain establishments or depots that can be utilized by the enemy for purposes of the war.

In the name of the delegation of Russia I have the honor to present the above amendment to Article 25 of the Regulations of 1899.

The **President** asks if the Russian amendment is subsidiary to the Belgian proposition or if it is submitted in opposition to it. He calls attention to the fact that in 1899 the Declaration whose renewal is now proposed by the Belgian delegation emanated from Russia, that Russia wished to give it a permanent character, and that another amendment reduced the time to five years.

His Excellency Mr. **Tcharykow** replies that the amendment is subsidiary and that Russia reserves the right to make a statement on the question.

Mr. **Szilassy** announces that the delegation of Austria-Hungary favors the proposition of the Belgian delegation aiming to prohibit the discharge of projectiles and explosives from balloons.

We think that the tactical result that can be obtained by the aid of these engines is not sufficient to justify the loss of life, the material damage and the expense involved in their use.

It is true that neither the belligerents nor the neutrals will be able to de-
[152] fend their right of sovereignty over the air zones and aerial frontiers that belong to them as effectively as their people and property.

But the new method of warfare mentioned in the Declaration is *not indispensable*; and this fact permits us to hope with assurance that the spirit of humanity and peace which hovers over this assembly and inspires its decisions—a spirit to which we have already sacrificed many a military exigency—will also be manifest here in the adoption, for a limited number of years, of the measures set forth in the Belgian proposition.

We do not wish to hinder the progress of science, but we would not encourage an application of it, which, without offering sufficient tactical advantage, would increase the cruelties of war.

The delegation of Austria-Hungary will therefore vote to renew the Declaration that has lapsed.

Mr. Louis Renault thinks that there is a little misunderstanding as to the possible value of the Declaration of 1899 regarding balloons, which has expired and which the Belgian delegation proposes to renew. The idea seems to be held that the humanitarian provisions enacted in the interest of certain localities and edifices, would be inadequate if projectiles and explosives could be thrown from balloons. This is not so. If, according to Article 25 of the Hague Regulations "it is forbidden to attack or bombard towns, villages, dwellings, or buildings that are not defended," and if, according to Article 27 of the same Regulations, "in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the same time for military purposes," we think that the provisions would fully apply to cases where it would be possible to discharge projectiles or explosives from balloons. The method of discharging the projectiles makes little difference. It is lawful to try to destroy an arsenal or barracks whether the projectiles used for this purpose comes from a cannon or from a balloon; it is unlawful to try to destroy a hospital by either method. That, in our minds, is the essential idea to be considered. The problem of aerial navigation is progressing so rapidly that it is impossible to foresee what the future holds for us in this regard. One cannot, therefore, legislate with a thorough knowledge of the question. One cannot forbid in advance the right to profit by new discoveries which would not in any way affect the more or less humanitarian character of war and which would permit a belligerent to take effective action against his adversary, while respecting the requirements of the Hague Regulations.

The French delegation therefore refuses its adhesion to the proposition of the Belgian delegation.

His Excellency Mr. van den Heuvel remarks that the proposition relative to balloons, which became the Declaration of 1899, was brought before the First Conference by the Russian Government.

Balloons may be used as means of communication, observation and destruction. Was it proper to make provisions in international law with respect to them, and what provisions?

In 1899 it was not thought necessary to formulate rules from the point of view of the threefold purpose which balloons may serve. The science of aerostatics did not seem to be sufficiently advanced to permit a determination of precise and lasting rules.

[153] And so the Conference limited it to one special provision which forbids the discharge of projectiles and explosives. It seemed proper to postpone until later the question of opening the air completely to hostilities and renouncing the hope of keeping it in the tranquillity of peace.

The Belgian delegation asks you to renew the Declaration made in 1899. It is not discussing at present the two propositions which have been communicated to you by Italy and Austria-Hungary.

The subsidiary character of these propositions leads it to hope for a prior adhesion to the main proposition which it has presented.

Some morose spirits have said that the First Conference had adopted the Declaration on balloons only because many believed it without real effect in view of the slight advance in the science of aerostatics. These are harmful criticisms and injurious insinuations.

The Conference adopted the Declaration in a spirit of humanity. Bombardment by balloons calls for stricter and more restrictive regulation than that by land or sea forces; it occurs under other conditions; it could cause very much more damage to peaceful non-combatants, inoffensive neutrals, and monuments which should be respected.

I like to think that you will not tolerate a recall of peaceful and humanitarian ideas and that we shall again to-day be unanimous as we were in 1899.

His Excellency Lord Reay asks if it is not enough to have two elements in which the nations may give free scope to their animosities and settle their quarrels without adding a third?

In the domain of armaments we know how difficult it is to apply a remedy, the evil being so widespread that it is difficult to know where to begin. Happily in the domain of aerial navigation the case is different and it does not seem impossible to prevent the evil because no nation has pushed so far ahead that it cannot retrace its steps.

The present Conference will not, I am sure, fail to recognize that we would render a great service to humanity and the cause of peace we pursue in holding the people back from this fatal precipice. In addition, financial considerations require us to do our utmost to check an increase of military and naval expenses which already constitute a crushing burden for all nations, an increase which will not fail to be felt if it become necessary to add to the budgets an item for the development of aerostatics.

I am firmly convinced that the Conference must act while there is yet time. Of what use will our efforts be to lessen the suffering caused by war if we call into being a new scourge, more terrible in its effects than the instruments whose field of action we seek to limit.

He finishes by declaring that, like the delegation of Austria-Hungary, the British delegation will vote for the Belgian proposition which corresponds with the desire of the British Government to put a stop to the increase of military and naval expenses. (*Applause.*)

His Excellency Turkhan Pasha makes the following declaration:

The object and task of this world Conference are to lessen as much as possible the evils of war. With this idea in mind, the Imperial Ottoman delegation is wholly in favor of the proposition of the delegation of Belgium [154] concerning the renewal of the Declaration relative to the prohibition of throwing projectiles and explosives from balloons.

Colonel Sapountzakis declares that the Greek delegation is prepared to vote in favor of the renewal of the 1899 Convention which has expired.

In case the Belgian proposition should not be unanimously adopted the Greek delegation intended to make a suggestion similar to that presented by his Excellency Mr. TCHARYKOW and by Mr. LOUIS RENAULT to the effect that the prohibitions and restrictions which have already been adopted by the 1899 Conference concerning bombardments, and which were proposed by the subcommission dealing with bombardment by naval forces, should also and for the

same reasons be adopted in case it should be decided to permit the throwing of projectiles from balloons.

In this sense the Greek delegation has the honor to support the proposals just made by his Excellency Mr. TCHARYKOW and Mr. LOUIS RENAULT.

Mr. Louis Renault remarks that the French delegation has made no proposal.

His Excellency Count de Selir declares that the delegation of Portugal agrees with the delegation of Austria-Hungary and supports the Belgian proposition.

His Excellency Mr. Lou Tseng-tsiang announces that the delegation of China adheres to the Belgian proposition.

The President puts the Belgian proposition to a vote and it is adopted by 28 votes, 2 of which are conditional, against 6. Ten countries are not represented.

Voting for: Germany (under reservation of unanimity), United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Cuba, Denmark, Dominican Republic, Great Britain, Greece, Haiti, Italy, Japan, Mexico, Norway, Panama, Paraguay, Netherlands, Portugal, Roumania (under reservation of unanimity), Salvador, Siam, Sweden, Switzerland and Turkey.

Voting against: Argentine, Spain, France, Montenegro, Persia, Russia.

His Excellency Mr. Tcharykow asks for a vote on the Russian proposition.

The President observes that since this proposition is only subsidiary to the Belgian proposition, according to the declaration of his Excellency Mr. TCHARYKOW, the vote by which the latter has just been adopted with a large majority appears to render a new vote useless.

His Excellency Mr. Tcharykow recognizes the subsidiary character of his amendment but he calls attention to the fact that there is nothing in it contradictory to the Belgian text which has just been voted; the latter not having been unanimously adopted it is necessary to put his proposition to a vote.

The President continues to believe that there would be a contradiction in the two votes.

His Excellency Mr. Tcharykow replies that all the Powers that have voted favorably upon the general prohibition required by the Belgian proposition will also vote very probably for the particular prohibition contained in the Russian proposition.

[155] The President states that he has no objections to putting the Russian proposition to a vote since it would have a permanent character, whereas the main proposition carries a time limit of five years.

His Excellency Count Tornielli thinks that since the Russian proposition is to be put to a vote it would be very desirable to vote also on the Italian proposition which he reads as follows:

I

It is forbidden to throw projectiles and explosives from balloons that are not dirigible and manned by a military crew.

II

Bombardment by military balloons is subject to the same restrictions accepted for land and sea warfare, in so far as this is compatible with the new method of fighting.

His Excellency Mr. **Tcharykow** declares in the name of the Russian delegation that he supports the Italian proposition in principle.

The President observes that the Italian proposition has the same character as the Russian proposition and that it can be put to a vote only under reservation of the vote already taken.

The floor is given to Brigadier General **de Robilant** who speaks as follows:

The Declaration of 1899 prohibited the use for a certain period of a new weapon which was vaguely designated by the words "from balloons or by other new methods of a similar nature." This Declaration evidently could have only a provisional character and represented exactly the uncertainty which prevailed at that time as to the dirigibility of balloons and as to the possibility of obtaining it.

Since then the situation has changed. A great Power, whose industry has always been at the head of all progress, has solved the problem which so long occupied the attention of scientists, and thanks to the light and powerful motors secured by new applications of machinery and metallurgy it has been able to construct a balloon which moves through the air as easily as a ship on the sea.

The other Powers are following it very closely, their engineers are laboring without interruption to find solutions perhaps better than those already existing, and it is probable that they will succeed. Progress has no limits and what to-day seems to us astonishing and extraordinary will to-morrow seem natural and even banal.

Under these conditions, in case it is not possible to forbid absolutely, although for a limited time, the use of balloons for certain acts of war, it is better to restrict and regulate their use for all time.

All scientific progress has always found an application in military art; as soon as we learned to sail and manage ships we were eager to arm them for attack and defense; armored cars equipped with cannon have been seen running on railroads in certain recent wars; to-morrow we will have armored automobiles armed with rapid fire guns—if this has not already been accomplished,—and it will become more and more difficult, as we have seen, to prevent balloons from being armed in their turn and using their arms.

[156] The military balloon, by the very nature of it, will always have a weakness which will be a sort of compensation for the almost limitless freedom of movement which it enjoys. It will never be as formidable as a war-ship; the projectiles which it can discharge will never be as effective as those discharged with terrifying swiftness from guns of large and small caliber; always subject to the control of its pilot, it will not present for neutrals any of the dangers threatened by anchored or floating contact mines; there is therefore no reason to be greatly frightened if they cannot be forbidden.

I understand very well how terrifying to the popular mind is the idea that some fine day there may fall out of the sky without any warning some sort of bomb which will blow up its houses and desolate its crops; but considering the matter coolly one will be easily convinced that this new engine of war is no more terrible than those already in use.

Moreover, it was probable that the Belgian proposition as formulated would not receive a unanimous vote; the Powers which have realized the greatest progress in the art of managing balloons will not easily give up the right to use them at a time when their progress in this difficult work gives them an undoubted advantage over the others. But if this proposition had been unanimously approved,

the prohibition of throwing projectiles from balloons or by other new methods of similar nature would have been maintained for five years. In these five years further and marked progress would have been made, for, as I have said before, there is no limit to scientific progress and its realization in our day is marvelously rapid. At the expiration of the five years there probably would not have been any other Conference assembled to renew the prohibition, and then the régime of prohibition would have been succeeded by one of absolute liberty; the engines which had been forbidden when they were still in infancy and had scarcely left their leading-strings, could be employed freely and without restriction when they had acquired all the force and courage of youth and would have become much more dangerous.

If unfortunately a war should break out then, balloons belonging to the belligerent armies could throw their projectiles against an undefended town, drop their explosives on the dome of a cathedral or on the tower of a museum, and they would be within their right; private balloons could, with the authority of the State, be armed and thus play a part in aerial operations similar to privateering without being restrained by the Convention of Paris; and finally, among the new methods of a like nature it is probable that small balloons without personnel and loaded with explosives, moving about in the air like silures in water and exploding by contact, would carry destruction where it was least intended, being under no control and thus not engaging the responsibility of those who started them. Events of this kind have already occurred.

That is where we would have been in five years if the Belgian proposition had been unanimously accepted, and where we are to-day with regard to the Powers that did not vote for it if nothing replaces the expired Declaration of 1899.

It is to fill this gap that we have presented our proposition, recommending it to the considerate attention of the high assembly.

If it is taken into consideration military balloons will no longer have, it is true, an exceptional status for a given period, but neither will they have absolute freedom the remainder of the time; if military balloons are no longer to be outside of the law we will at least make them subject to law.

To be allowed they must be dirigible, that is to say they must be able to go wherever and only where it is desired to take them; they must be manned [157] in order to make their control effective; they must be equipped with a military personnel and, consequently, subject to military laws; and finally they may throw projectiles and explosives only within the limits and restrictions which govern bombardments in the established conventional law.

Five years constitute a very short period in the life of nations and in the march of progress, and since it has not been possible to forbid the use of balloons even for this insignificant period, we ask at least that their abuse may be forbidden for always.

It may be that the rules relating to bombardment adopted by the 1899 Conference also apply, as the eminent Mr. LOUIS RENAULT of the French delegation has said, to balloons, but as this interpretation has not yet been given it cannot be considered as settled.

Major General von Gündell says that he has with great interest followed the explanations given by General DE ROBILANT concerning the reasons for the Italian proposition. but he wonders what connection can exist between the power to direct a balloon and that of throwing projectiles and explosives from it. In his

opinion it is very difficult to say whether a balloon is or is not dirigible; for there are balloons which are dirigible in an ordinary wind but which no longer obey the rudder when the wind reaches a certain violence. Besides, it is also possible to throw projectiles from non-dirigible balloons.

An enemy wishing to throw projectiles from an ordinary balloon on a fortress would have only to await a favorable wind which would direct it towards the fortress.

He consequently asks that the vote on the two articles of the Italian amendment be separated and declares that he will favor only the second.

Major General **Amourel** sets forth that there are three points to be distinguished in the Italian proposition. The first, to the effect that a balloon must be dirigible, is, in his opinion, couched in too vague terms since it is difficult, as General **VON GÜNDELL** has already observed, to prove the absolute dirigibility of a balloon. It would therefore be useless to insert it in a convention.

The second point has to do with the military crew of a balloon. According to him the military crew cannot be considered as a condition *sine qua non* for a dirigible balloon; for one can perhaps direct a balloon from a point on the ground.

As to the third point, which concerns the restrictions accepted for war on land and sea, it seems to him to be sufficient to give the text of the 1899 Regulations respecting the laws and customs of war on land the general character which they have in effect, since the word bombardment is applicable to every method, present or future, which may be employed in throwing projectiles or explosives.

Brigadier General **de Robilant** says: I recognize the justice of the observations of my honorable colleagues of the French and German delegations, but I must remark that General **VON GÜNDELL** is disposed to admit the use of non-dirigible balloons and General **AMOUREL** that of balloons without personnel. But the Italian proposition tends to restrict the use of balloons, in case it is not possible to forbid it, and cannot accept the modifications which would lessen the force of this restriction.

His Excellency Mr. **Tcharykow** states that there is a difference of opinion only in regard to the first article of the Italian amendment, and that there seems to be accord as to the principle of the second, which forbids in a general [158] way bombardment of undefended towns, villages, dwellings, etc. He therefore believes that the two articles should be divided and voted upon separately.

The **President** replies that such is indeed his intention and with the reservation that the texts, which have just been presented and have not been examined at leisure, shall be revised by the committee of examination, he puts to vote the first article of the subsidiary amendment of the Italian delegation, worded as follows:

It is forbidden to throw projectiles and explosives from balloons that are not dirigible and manned by a military crew.

Thirty-five delegations take part in the vote.

Voting for: United States of America, Belgium, Brazil, China, Denmark, Dominican Republic, Great Britain, Greece, Haiti, Italy, Nicaragua, Norway, Panama, Paraguay, Netherlands, Persia, Portugal, Salvador, Serbia, Siam and Switzerland.

Voting against: Germany, Argentine, Chile, Cuba, Spain, France, Roumania and Sweden.

Not voting: Austria-Hungary, Bulgaria, Japan, Montenegro, Russia and Turkey.

The **President** declares the first article adopted by 21 votes to 8, with 6 not voting.

Colonel **Borel** desires to explain the meaning of the affirmative vote which the Swiss delegation proposes to make in favor of Article 2 of the Italian proposition which is about to be submitted to the subcommission. The Swiss delegation does not believe that this article will fill a gap in Article 25 of the 1899 Regulations. The general and absolute terms of this Article 25 seem to him to forbid, now and without exception, the use of all projectiles or similar methods whatsoever, either from balloons or in other ways, against "towns, villages, dwellings or buildings which are not defended." And so the Swiss delegation considers that Article 2 of the Italian proposition is simply a confirmation of Article 25 of the Regulations, a confirmation which cannot, either in purpose or effect, restrict or call in question the integral force of the present text of Article 25.

His Excellency Count **Tornielli** thinks that if it had been considered that the stipulation of Article 25 of the 1899 Regulations carried the prohibition against throwing projectiles from balloons, it would not have been found necessary to make a special convention on this subject; apparently there was a different opinion.

Colonel **Borel** observes that the prohibition stipulated in 1899 applied not to the attack and bombardment of undefended towns and villages, but rather to the throwing of projectiles from balloons on enemy troops.

The **President** observes that the provision just adopted relates in any case to Article 25 of the 1899 Regulations and must be inserted there, while the Declaration shall be preserved in the form in which it was voted. The **PRESIDENT** puts to vote the second article of the Italian amendment, thus worded:

Bombardment by military balloons is subject to the same restrictions accepted for land and sea warfare, in so far as this is compatible with the new method of fighting.

[159] Thirty-five delegations take part in the vote.

Voting for: Germany, United States of America, Argentina, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Denmark, Dominican Republic, Spain, Great Britain, Greece, Haiti, Italy, Japan, Montenegro, Nicaragua, Norway, Panama, Paraguay, Netherlands, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Switzerland.

Voting against: Cuba.

Not voting: France, Sweden and Turkey.

The article is carried by 31 votes to 1, with 3 not voting.

The **President** recalls that the Convention of 1899 was completed by two other Declarations, one relating to "prohibition of bullets which expand in the human body" and the other "dealing with prohibition of the use of asphyxiating projectiles," and that nobody asked for the revision of these two Declarations.

His Excellency Lord **Reay** declares that Great Britain, which had not signed this last Declaration, to-day adheres to it.

The **President** records the adhesion of his Excellency Lord **REAY** and felicitates himself on seeing accord thus become more and more general.

Passing then to the Declaration relative to the prohibition of the use of certain bullets, the **PRESIDENT** considers that all discussion on the subject of this

Declaration must, as for the one preceding, be declared out of order. These two Declarations were concluded for an indefinite period, they can be denounced only by means of a notice given one year in advance, and no Power has expressed such an intention. Moreover, the modification or abrogation of these Declarations does not appear in the program and the restrictive proposal of the United States is not connected therewith.

These remarks meet with no objection.

Their Excellencies Lord Reay and Count de Selir announce that the delegations of Great Britain and Portugal will sign the Declaration forbidding the use of bullets which expand or flatten easily in the human body.

The President congratulates the Conference on these valued adhesions. (*Applause.*)

He states that the work of the subcommission is ended and adjourns the meeting at 4:45 o'clock.

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SECOND COMMISSION

SECOND SUBCOMMISSION

FIRST MEETING

JUNE 29, 1907

His Excellency Mr. T. M. C. Asser presiding.

The meeting opens at 2:45 o'clock.

The **President** announces that the Second Commission has done him the honor of designating him as President of the second subcommission, but that this nomination is not quite regular inasmuch as Article 4 of the Regulations provides that the subcommission shall choose its own bureau. Before proceeding to the examination of the questions it is therefore necessary to first nominate the President.

His Excellency Mr. Carlin proposes that the nomination of his Excellency Mr. ASSER for the presidency be confirmed.

This proposal is unanimously adopted. (*Applause.*)

His Excellency Mr. Asser expresses his thanks for this honor which he considers as a homage to his country. With a view to proceeding to the nomination of the secretary provided for by the Regulations of the Conference, he proposes to the assembly that Colonel BOREL, delegate plenipotentiary of Switzerland, be entrusted with this duty. (*Applause.*)

In the absence of the latter his Excellency Mr. Carlin accepts and thanks the assembly in his name.

The **President**, after thanking his Excellency Mr. NELIDOW and Mr. DE BEAUFORT for the honor of their presence at the first meeting of the subcommission, and after announcing the enrolment of General VINAROFF, first delegate of Bulgaria, invites the assembly to take up the study of the questions on the program, to wit:

Opening of hostilities.

Rights and duties of neutrals on land.

As he considers the second of these questions much the more difficult and complex and as the two propositions submitted on this subject, to his mind, do not offer a sufficient basis for discussion, he believes it preferable first to take up the first question¹ concerning which the French delegation has submitted a proposition.²

This suggestion having met with no objection, he reads the *questionnaire* prepared under his direction.³

[164] The examination of the six articles of this *questionnaire* gives rise to a preliminary exchange of views which, as the **PRESIDENT** explains, cannot bind either the Governments or the speakers, and is not to figure in the minutes nor be communicated to the press.

¹ Opening of hostilities. See also *ante*, Second Commission, p. 31 [33].

² Annex 20.

³ Annex 19.

According to his expression it is not a question of "the opening of hostilities" but of an "opening of peaceful discussion," which for the present will not result in any vote.

Their Excellencies Lieutenant General Jonkheer den Beer Poortugael, Mr. Nelidow, Mr. A. Beernaert and Mr. Carlin take part in this exchange of views; then his Excellency Mr. Tcharykow reads the following declaration:

The delegation of Russia reserved the right, in the meeting of the 22nd, to present to this subcommission a proposition relating to the opening of hostilities. Since then the subcommission has taken cognizance of the French proposition on the same subject. The Russian delegation takes pleasure in supporting this proposition. It contains, in fact, a solution of the question previously raised by us in the above-mentioned meeting and included as subject one in the present *questionnaire*, a solution which was the subject of the eulogistic and eloquent discourse of General DEN BEER POORTUGAEL and which conforms to the common interests of civilized nations, and we hope that in the course of the discussions to be held on other points on the program it will be possible to give useful development to the ideas expressed in the French proposition.

The President then invites the delegates who may have propositions to submit to present them by Monday evening at the latest, and fixes upon Friday morning at 10:30 as the date of the next meeting of the subcommission.

His Excellency Lou Tseng-tsiang, in the name of the delegation of China, reads the following declaration:

The delegation of China believes it should declare before the high assembly that it reserves the right to refrain from voting upon the propositions which, according to its opinion, might offer some difficulty or inconvenience in their strict and immediate observance, and to present to the Commissions amendments or projects on the questions which have a close analogy to those already included in the program of the Conference.

Nevertheless, the delegation, sincerely animated by a spirit of accord and conciliation, would voluntarily depart from this reservation to join with its colleagues for the purpose of assuring a majority or unanimous vote on the propositions made in the interest of this work of peace and true progress for which we have all met here for the second time.

The President, on the request of the first delegate of China, records his declaration.

His Excellency Lord Reay asks that in the future the bulletins of convocation mention the matters which will be under discussion in order to allow the delegates to be prepared on them.

It is so decided.

Colonel Borel, offering his excuses for not having been able to be present at the opening of the meeting, thanks his colleagues for the honor done him in making him secretary.

The meeting adjourns at 3:30 o'clock.

[165]

SECOND MEETING

JULY 5, 1907

His Excellency Mr. A. Beernaert presiding.

The meeting opens at 10:50 o'clock.

The minutes of the first meeting are adopted.

His Excellency Mr. Asser, President of the subcommission, being ill, his place is filled by his Excellency Mr. A. Beernaert, President of the Commission.

The President calls attention to the fact that but a single question is on the program for the day, this subject being the opening of hostilities, and in regard to it only two propositions have been submitted, one of them from the French delegation¹ and the other from the Netherland delegation.²

His Excellency Lieutenant General Jonkheer den Beer Poortugael takes the floor to explain this last proposition. He reads the following declaration which he had already formulated in the course of the preceding meeting in response to the *questionnaire* of his Excellency Mr. Asser.

GENTLEMEN: You know that at the meeting of last Saturday we received the *questionnaire* which we are now to take up only a few minutes before the commencement of the discussion it was desired to hold.

The interval between the time of its receipt and the opening of the meeting has therefore been very short. I was taken not exactly by surprise but nevertheless somewhat unprepared, and in taking the liberty of expressing frankly my opinion upon the questions at issue before this high assembly I ask your indulgent allowance for any defects which this improvised work may contain.

However, since my opinions have not undergone any change between that unofficial occasion and this official one, and to avoid taxing your patience and causing, by pure repetition of what has been said, a loss of time which would be prejudicial to the progress of our deliberations, I request permission simply to refer to what I said at that time and confine myself to laying on the table for incorporation in the minutes of the Conference the substance of my discourse faithfully rendered to the best of my recollection. In case you do not agree with me as to this I am quite ready to repeat everything.

[166] I. With regard to the first question: "Is it desirable to establish an international understanding relative to the opening of hostilities?" my reply is, Yes.

In the first place I feel that I must state a fact which you know and which General YERMOLOW so eloquently expressed in our first meeting, namely, that there does not exist at present anything that can determine the situation. It is an error to suppose that the law of nations now requires a formal declaration of

¹ Annex 20.

² Annex 22.

war or any equivalent procedure before the commencement of hostilities. I have already denied the correctness of any such idea. Positive law says nothing about it. We are living in a state of entire uncertainty about this question. Some say one thing, some say another. We can cite wars with, and as many without, preliminary declarations. Each State has a legal right to act as it sees fit about it.

It seems to me that it is more than time that this uncertainty should cease and that we should know where we stand in a matter of such serious consequence to the people.

II. The next question is: "Is it best to require that the opening of hostilities be preceded by a declaration of war or an equivalent act?"

In regard to this our point of view is the same as that of the Institute of International Law as expressed at the session of Ghent in September of last year.

It is in conformity with the spirit of modern international law, with that loyalty which nations owe to each other in their mutual relations, and with the interests common to all States, that hostilities should not begin until after a preliminary and unmistakable warning.

And why should this be? In my opinion it is based on reasons which are easy to see.

Demands are being made for the disarmament of nations. Why, then, should we not begin with things that are very easy of accomplishment? If that does not lead directly and ostensibly to the desired end, it will at least contribute indirectly to it in that the States will not have as much need of remaining armed in time of peace in order not to be taken unprepared.

Another reason is that the commercial relations, which in these times are developed to such an extraordinary degree, make it necessary that there should be an exact determination of the moment of the commencement of a state of war which overturns and changes everything.

III. To the third question, "Is it best to fix upon a time which must elapse between the notification of such an act and the opening of hostilities?" I reply also in the affirmative.

That is why I have taken the liberty of amending the proposition of the French delegation, with which I am in other respects in accord.

It seems to me that in a matter of such importance as that which now occupies our attention it is desirable to be precise and avoid vague terms.

Now, if it is not precisely stated what is meant and sought to be gained by the use of the expression "preliminary notification," this warning may be sent to an adversary an hour, a half hour, or even less, before troops cross the frontier. It goes without saying that the *preliminary* requirement would not then do much good.

If it is desired to prevent surprises and to make it impossible for the notification to become in this regard a mere form, if it is really sought to contribute to the tranquil development of pacific relations between nations, then it is necessary to fix upon a delay and prescribe that a period of at least 24 hours must elapse. As it appears to me that this is the least that could be given I shall have the honor of proposing it.

[167] IV. "Should it be stipulated that the declaration of war or equivalent act be notified to neutrals? And by whom?" is the fourth question.

Such a stipulation is absolutely necessary. There are so many affairs of importance from one end of the earth to the other which are changed or affected

the moment that war is commenced that neutral Governments and their subjects ought to be officially informed immediately, not only by the State which has declared war but also by all the States which have become belligerent parties to it, since it may happen that a State which declares war against another State may involve still other States in this war by reason of treaties of alliance by which they are bound. Neutral merchants and mariners, who at the outbreak of a war are often at long distances from their home ports, ought to be informed as to their situation.

The floor is then given to Colonel Michelson who reads the following declaration:

GENTLEMEN: During the course of the preceding session our delegate, Mr. TCHARYKOW, announced that the Russian delegation was supporting the French proposition. Since then the amendment of the Netherlands has been submitted.

In regard to the question of the opening of hostilities the Russian delegation is desirous of doing everything in its power to aid this Conference in arriving at a solution which shall be the most favorable to the cause of security and mutual confidence between nations. It is for this reason that I request to be allowed to submit to your benevolent attention the following additional considerations relating to the two above-mentioned propositions advanced by the delegations from France and the Netherlands.

My colleague, General YERMOLOW, has explained to you the present state of the question.

I wish to point out to you to-day the advantages which the nations could derive from a solution of this question which would prescribe a more or less extended delay between the rupture of peaceful relations and the beginning of military operations.

As you cannot fail to understand, the problem of such a delay is intimately connected with the relation which exists between the peace and war establishments of every country. Consequently a result of its adoption would be a more or less considerable reduction of expenditures.

The time may not be so far distant after all when we shall be able to distinguish between the troops and other preparations for war which every country in its own sovereign judgment deems requisite in its political situation, and those that it is compelled to maintain only through the necessity of being constantly in readiness for fighting. By establishing a certain interval between the rupture of peaceful relations and the beginning of hostilities, an opportunity would be afforded to such countries as may desire it to realize certain economies during times of peace. It is undeniable that these economies would be beneficial in every way, and could not fail to bring about a great relief from the burden of armed peace, a relief all the more acceptable because it would in no way affect the right of each nation to fix its own forces and armament solely in accordance with its own views and needs.

There is still another advantage to be derived from the proposed delay. It would leave to friendly and neutral Powers some precious time which they could use in making efforts to bring about a reconciliation, or to persuade the disputants to submit their causes of difference to the high Court of Arbitration here.

But, while speaking of this subject of a delay, we must not lose sight of what is at present possible. The idea of any considerable delay is not yet developed in the consciences of the people of the nations.

[168] Consequently it would perhaps not be wise to go too far with our desires, in order that we may not get beyond what is really possible in practice at the present day. So let us content ourselves with accepting the delay of twenty-four hours which has been proposed by the delegation of the Netherlands.¹ Let us leave to the future the work of the future, and merely express our hope that in the future the benefits of a still longer delay will be secured.

The proposition of France, together with the amendment of the Netherland delegation, presents the happy advantage of being at this moment a line of demarcation between the past and the future.

We may hope that upon this line we may all meet and there all understand each other, and we may further hope that no person will desire to abandon it to return to the state of complete uncertainty in which we have heretofore been existing. A delay of twenty-four hours is not after all really a delay, it only affords sufficient time to warn the population and the troops that the crisis has arrived.

Gentlemen, you would no longer consider that peace, which has brought us together here, is something inferior to an armistice. You would not refuse to accord to peace in this, the Second Conference, that which was granted to an armistice by the First Conference as expressed in Article 36 of the Convention on the laws and customs of war.

The floor then being given to General Amourel, he reads the following statement of the arguments in support of the French proposition.²

In beginning the discussion of the draft regulations on the opening of hostilities which the French proposition has had the honor to submit to your consideration, it is assuredly not inadvisable to furnish you with some explanations intended to support the terms of the proposition.

In the first place it is not thought necessary to consider the supposition of a war undertaken without some serious and apparent reason, or without some incident having arisen susceptible of giving rise to a discussion. An aggressive attack in time of ordinary peace and without any plausible motive is no longer compatible with the public sentiment in the nations of the civilized world which we are representing here.

The war will then have for its cause some fact at least possessing a certain gravity and capable of producing an exchange of explanations. Then will ordinarily commence a period of diplomatic negotiations, during the course of which each Power will seek to induce the other to agree to such terms as may be required to satisfy its interests. If they fail to reach such an agreement one of the Powers may have recourse to a threat of war setting forth in an ultimatum the concessions which it requires. It will generally be the case that a period will be specified for the reply and after this the appeal to arms may be resorted to.

When the events develop in this manner at the beginning of a war between two nations there can be no doubt that there will be a sufficient declaration of war. The ultimatum itself expresses an unmistakable preliminary notification. It states the concessions which are demanded and consequently the cause for war in case of their denial. And finally it places a time limit before the beginning of the war according to the happy expression of our colleague of the Russian delegation, since the state of war dates from the expiration of the period given for the reply.

¹ Annex 22.

² Annex 20.

But it may sometimes happen that the provoking cause of the conflict will not be followed by any diplomatic negotiations. In certain cases the moral or material damage done to a State may appear to it so grave that it is not deemed possible to seek reparation in any other way than by force of arms. This same thing sometimes occurs in conflicts between individuals when the seconds of one party receive instructions to accept nothing but an encounter.

Then it may also happen that during the course of diplomatic negotiations these may take such a trend that the complainant can no longer hope to [169] obtain satisfactory conditions in this way. It may, therefore, very well be decided to completely discontinue the negotiations at this point and resort to force to secure the satisfaction that is judged to be necessary.

In these two cases, whether war breaks out immediately or during the negotiations, it will commence through the sudden or unexpected manifestation of the expressed determination of one of the parties in dispute. But it would seem that even in these cases the opening of hostilities should be accompanied by the same guarantees as are granted when the conflict follows an ultimatum.

When there is an ultimatum it contains a statement of the causes for the war and it gives an unmistakable preliminary notification of hostilities. We demand that a notification be given to the adversary containing these things in those cases in which one of the parties decides to fight without having entered upon, or during the progress of, a diplomatic discussion.

There is no necessity for justifying the requirement that the notification should be unmistakable. And it also ought to be preliminary. By that we understand that it ought to precede hostilities. But these might begin as soon as the notification has reached the adversary. The limitation on the time for beginning the war will thus be less clearly fixed than in the cases in which there is an ultimatum. We are therefore of the opinion that the fact is that the necessities of modern warfare do not admit of making a demand on the attacking party for any greater delays than such as are absolutely necessary in order that the opposing party may know that force is to be employed against him.

We also believe that the reasons for the declaration of war ought to be stated. It is thought that this condition should be readily accepted because the Powers, having resolved to resort to fighting only when they are convinced that they are in the right, ought not to hesitate to publicly proclaim their reasons. Furthermore, it is particularly desirable that the causes for the war should be communicated to the States not involved in the conflict but who are bound to suffer from its consequences and who have a right to know why they suffer. And finally these same States, if they are informed as to the causes of the war, may perhaps be more disposed to tender their good offices while observing respect toward the interests in question.

These are the explanations for the terms of the first article of our draft regulations. As to the second article, you will doubtless perceive the necessity of giving notification of the existence of a state of war to neutral nations as soon as possible since it does not concern the belligerents alone but also gives rise to much trouble in the affairs of these neutral countries.

And furthermore, is it not necessary to do this if it be desired to place neutral States in a position to fill the rôle reserved for them by Articles 6 and 27 of the Convention of July 29, 1899?

Such, gentlemen, are the reasons which the French delegation had to explain

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THIRD MEETING

JULY 12, 1907

His Excellency Mr. T. M. C. Asser presiding.

The meeting opens at 10:45 o'clock.

The minutes of the second meeting are approved without remark.

The **President** announces that the delegation of the Grand Duchy of Luxemburg has presented an amendment¹ to the German proposition relative to the treatment of the property of neutral persons,² with a view to adding to Article 70 a paragraph thus worded:

This authorization does not extend to means of public transportation leading from neutral States and belonging to said States or to their grantees, recognizable as such.

This amendment will be printed and distributed to-day.

In accordance with the order of the day, the **PRESIDENT** proposes to resume the general discussion on the opening of hostilities.

He recalls that at the last meeting, which he unfortunately was unable to attend, owing to illness, the representatives of Great Britain, the United States and Japan declared their intention of reserving their opinions on the French proposition³ until they had received instructions from their Governments. He asks if they are prepared to give them to-day.

His Excellency Lord **Reay** then announces that the British delegation adheres to the French proposition.

His Excellency General **Porter** also adheres to it and reads the following declaration in explanation of his adhesion:

The delegation of the United States of America, although cordially in sympathy with what has already been said on the subject of the opening of hostilities, is of the opinion that it is necessary to call the attention of the Commission to that provision of the federal Constitution which bestows upon Congress the exclusive power to declare war, in the following terms: "The Congress [173] shall have power to declare war, grant letters of mark and reprisal, and make rules concerning captures on land and water."

A power granted by the Constitution is not subject to any regulation or modification by law or by treaty; in other words, this power is independent of the legislative power and of the power to make treaties.

But it is with great satisfaction that this delegation can say to you that the proposition presented by the French delegation does not conflict with the

¹ Annex 39.

² Annex 36.

³ Annex 20.

above-cited constitutional provision, and for this reason the delegation of the United States of America takes pleasure in supporting it. However, it seems desirable to add here that although these facts are correct in regard to offensive military operations, the invariable policy of the United States Government has been to recognize in the President as commander in chief of the land and naval forces, the full power to defend the territory and property of the United States of America in case of invasion, and to exercise the right of national defense at any time and at any place.

His Excellency Mr. **Keiroku Tsudzuki** states in his turn that he has just received instructions from his Government to the effect that being attached, as it has always been, to the principle contained in the proposition of the French delegation concerning the opening of hostilities, it finds no difficulty in accepting the said proposition.

In conformity with the above-mentioned instructions the Japanese delegation accordingly gives its entire support to the French proposition.

Colonel **Sapountzakis** requests the floor in order to read the following statement:

The Greek delegation has the honor to announce that in adopting the views set forth by the first delegate of Germany it accepts the first article of the French proposition in the form in which it was presented by the delegation of that country.

In regard to the second article, the Greek delegation, after the exchange of views upon the subject which has taken place, has decided to accept it together with the amendment presented by the Netherland delegation¹ in the form in which it was last submitted by the PRESIDENT for the approval of the sub-commission.

His Excellency Lieutenant General **Jonkheer den Beer Poortugael** submits to the subcommission some remarks of an academic nature upon the subject of the twenty-four hour delay in regard to which he had offered an amendment to Article 1, and he explains briefly the reasons which caused him to formulate it. He cites in support of his argument certain precedents which have been furnished by military history on several occasions of agreements of armistice.

Do I need, gentlemen, he says, to submit to your attention that if it has been found necessary to stipulate a delay after the termination of an armistice, it goes without saying that such a delay is even more necessary when the people are to pass from the tranquil condition of peace to the distressing condition of war. When an armistice is in effect the armies are on a war footing and are quite ready to return to the conflict, while in time of peace in order to be in a position to make a defense against the enemy almost everything has still to be done.

I will mention as one instance the armistice concluded May 23/June 4, 1813, at Plesswitz, between the allied German and Russian armies commanded by General **BARCLAY DE TOLLY**, and the army of the Emperor **NAPOLEON**.

[174] The first three articles in this agreement were:

Article 1. Hostilities shall cease at all points upon notification of this armistice.

Article 2. This armistice shall last until July 3/July 20, inclusive, with six additional days for its denunciation at the expiration of this period.

¹ Annex 22.

Article 3. Consequently, hostilities shall not be resumed before the expiration of six days after the termination of the armistice shall have been announced at the respective headquarters.

As you see, gentlemen, six days were allowed for the denunciation of an armistice while I am asking only twenty-four hours at the least in which to bring about a change that is a hundred times more serious and difficult.

He then refers to the project for a codification of the laws and customs of war which was drawn up at Madrid in November, 1892, by the Spanish, Portuguese and American military Congress. That Congress "being impressed with the necessity of bringing the purposes of the state of war into harmony with the sentiments of humanity and with the scientific and moral progress of our times," proposed that "when there is no fixed delay for the resumption of hostilities after an armistice, the belligerent Government commander that proposes to continue the conflict shall be obliged to notify the enemy a sufficient time in advance as to the exact date when hostilities will recommence."

The President thanks Lieutenant General Jonkheer den Beer Poortugael for his statement.

His Excellency Mr. A. Beernaert observes that the question of a delay, as it is now submitted to the subcommission, presents a double aspect. The first concerns the belligerents, and it is to this that the discussion of Lieutenant General Jonkheer DEN BEER POORTUGAEL applies. The other one concerns neutrals and was considered by General AMOUREL at the last meeting when he stated that the French delegation would be in favor of having a delay between the declaration of war and the beginning of its effects upon neutrals (Minutes of July 5).

In the opinion of his Excellency Mr. BEERNAERT a delay is obviously necessary from this second point of view.

It is true, he says, that the principle of a simple telegraphic notification has been accepted; but this will not be sufficient to place neutral States in a position to fulfill their duties. Instructions must be transmitted from the capital to the frontiers and for this reason there should be a suitable delay, to begin from the moment at which the notification of war is received at the seat of government.

The President having invited the subcommission to express its opinion upon this subject, Lieutenant General Amourel remarks that discussion would thus be open on the second article when no vote has yet sanctioned the agreement which appears to have been reached as to the first article.

An exchange of opinions then takes place between the President, Major General Amourel, and Mr. Louis Renault, in order to determine whether it is best to refer this question to a committee of examination or whether it should be immediately put to vote in accordance with the request of the French delegates who maintain that the adoption of Article 1 should be sanctioned by a ballot. The President thinks such a ballot not necessary in view of the support which has just been given to the French proposition by the representatives of the three

Powers that had at first reserved their decisions.

[175] His Excellency Mr. A. Beernaert on the other hand thinks that a vote is indispensable. The French plan, which requires a preliminary notification but which does not fix upon any delay, is in his opinion unacceptable.

It is upon this delay of twenty-four hours, he says, that the subcommission should register its decision.

Mr. **Louis Renault** desires to set forth the manner in which the French delegation regards the question: Two texts are now up for discussion, his own and that of Lieutenant General Jonkheer **DEN BEER POORTUGAEL**. He declares that if it should be decided to ask for their union and if they are to be together put to vote he will vote against the resulting draft.

His Excellency Mr. **Keiroku Tsudzuki** thinks it necessary to call attention to the fact that in the statement which he read at the opening of the meeting he was to be understood as supporting "entirely and exclusively both in form and substance" the French proposition to the exclusion of all amendments.

His Excellency Mr. **Mérey von Kapos-Mére** suggests that an attempt might be made to reconcile the two points of view by taking two separate votes on the French proposition and the Netherland amendment.

His Excellency Mr. **Carlin** reminds the assembly that at the last meeting the French text had been considered as excluding the plan of any fixed delay. It is therefore necessary to take a vote upon this text in order to permit the different opinions to be shown.

The Swiss delegation, moreover, reserves the right to ask that the distinction to be established between the delay relative to belligerents and that which concerns neutrals should be determined by a double vote.

Colonel **Ting** states that the Imperial delegation of China has taken note of the French proposition and approves its wording. But he observes that this question being bound to give rise to eventual obligations, it would be very important to settle the point as to whether a declaration of war can be considered by the State toward which it is directed as a unilateral act and whether the latter can regard it as null and void. It might be well, moreover, he says, to define what is meant by the term "war," for it has often been made under the name of an expedition as may be learned from numerous instances that can be found in the history of my own country.

His Excellency Baron **Marschall von Bieberstein** declares that the German delegation can accept no proposition involving a delay and for this reason supports the French proposition. If it is adopted, the way will be clear, in discussing Article 2, to proceed to a special vote with regard to the delay to be accorded to neutrals, as Mr. **CARLIN** has pointed out.

His Excellency Mr. **de Quesada** wishes to make the following declaration in the name of the delegates of Cuba:

In view of the fact that paragraph 12 of Article 59 of the Constitution of Cuba mentions among the powers of Congress that of declaring war, it is not possible for the delegation to subscribe to any act that does not reserve to our Congress the right to determine the form and conditions of such a declaration.

The **President** announces that the first article is to be put to vote, but that the ballot will first be taken on the Netherland amendment relative to the delay of 24 hours, and that if the latter is rejected the French text can in consequence be considered as adopted.

His Excellency Mr. **Mérey von Kapos-Mére** expresses the opinion that it would be more logical and more in conformity with parliamentary usage [176] to take the vote in the opposite order. He thinks that the French text should be put to vote first and asks that the preliminary question raised by this difference of views be settled first by a vote.

The vote then taken by the **President** on the Netherland amendment results as follows:

Thirty-four delegations take part in the vote.

Voting for: Belgium, Brazil, Denmark, Dominican Republic, Ecuador, Luxemburg, Montenegro, Norway, Netherlands, Persia, Russia, Siam and Switzerland.

Voting against: Germany, United States of America, Bulgaria, Chile, Spain, France, Great Britain, Greece, Italy, Japan, Mexico, Panama, Portugal, Roumania, Salvador and Sweden.

Not voting: Austria-Hungary, China, Cuba, Serbia and Turkey.

The amendment is therefore rejected by 16 votes to 13 with 5 delegations not voting.

Upon announcing the result of the vote the **President** asks if it does not imply the adoption of the first article of the French proposition.

Mr. **Louis Renault** remarks that the question is of sufficient importance to justify a separate vote, whereupon the French text is voted upon and unanimously carried with the exception of two votes, those of Brazil and the Dominican Republic, the representatives of China and Cuba declining to vote.

The subcommission then takes up the discussion of Article 2 in regard to which his Excellency Mr. **A. Beernaert** has submitted the following amendment:

The existence of a state of war must be notified to the neutral Powers.

This notification, which may be given even by telegraph, shall not take effect in regard to them until 48 hours after its receipt.¹

His Excellency Count **Tornielli** having remarked that an agreement seemed to have been reached in the preceding meeting as to the draft which was inserted in the minutes of July 5, Colonel **Borel** observes that there is only a question as to the wording and that has to do with the principle of granting a delay of 48 hours with respect to neutrals, which is now under discussion.

Mr. **Louis Renault** fears that the text as read might give rise to confusion. Would it not be inadmissible indeed, he says, for a neutral State to have at its disposal 48 hours in which it could commit acts contrary to the rules of neutrality?

Mr. **Kriege** requests the floor simply to support the observation of Mr. **Louis Renault**.

His Excellency Mr. **Nelidow** remarks that the question thus raised appears to come within the scope of the program of the Fourth Commission so far as concerns the subject of war on sea and departure from neutral ports.

Captain **Lacaze** mentions, as an example of the dangers which might arise through an abusive advantage being taken of the proposed text, that in [177] certain cases neutrals might be permitted to profit by such a delay to sell a war-ship to the belligerents.

His Excellency Lieutenant General **Jonkheer den Beer Poortugael** submits some remarks to the effect that the rights and duties of neutrals commence only at the moment they become actually aware of the existence of the war.

His Excellency Mr. **Carlin** thinks it necessary to find a wording which will take into account the legitimate objections just made to the proposed draft by

¹ Annex 21.

several of the delegates, and which will at the same time safeguard the rights of neutrals.

His Excellency Mr. A. Beernaert declares that he has never intended to go so far as some of the delegates seem to think.

His amendment is inspired solely by the thought of preventing the Governments from being held responsible for acts attributable to some of their *ressortissants* not yet informed of the opening of hostilities; the telegraphic notification must of course be addressed to the seat of the Government and can be brought to the knowledge of all the inhabitants only so far as the means of communication will permit.

In regard to this question his Excellency Count Tornielli points out that it is very important to state precisely by whom the telegraphic notification must be made and to whom it shall be addressed.

The President, considering that the question as presented is one that ought to be referred to a committee of examination, and thinking that it would be unwise to proceed to a vote without further enlightenment, proposes that it be so referred, which course is decided upon without opposition. He says that it will be the duty of this committee to take into full consideration the ideas expressed by Count TORNIELLI. He likewise refers to its examination the remarks of his Excellency Mr. Milovan Milovanovitch, who declares himself in favor of the principle that the responsibility of neutrals begins from the time of the notification, but who considers it necessary to grant a certain delay to their Governments in order that they may take the necessary measures.

There being no opposition to the adoption of Article 2, *under reservation of the amendments proposed and the differences of wording which will have to be examined by the committee*, the President declares that the question concerning the opening of hostilities may be considered as provisionally settled. He then announces that the next meeting of the subcommission will be devoted to the draft regulations on the rights and duties of neutrals on land, on the subject of which there has been presented a French proposition¹ with four amendments offered regarding it, and a German proposition,² which has given rise to three amendments. The French proposition is given first place on the program for the next meeting without opposition.

His Excellency Mr. Carlin asks that the meeting be not adjourned before the subcommission has considered, in regard to the question of the opening of hostilities, what reply it would make to the sixth article of Mr. ASSER's *questionnaire* relative to "the diplomatic form in which it is best to set out the understanding."³

He thinks it important to clearly specify upon this point whether the understanding shall be made the subject of a special act or whether it shall be included with other matters already codified. After having recalled that the first subcommission is in charge of the revision of the 1899 Regulations, and that, moreover, this question equally relates to war on sea which comes under the work of the Third Commission, he expresses the desire that this question of form may be settled as early as possible for it might have some influence on decisions to be made as to the substance.

[178] His Excellency Mr. Nelidow and Mr. Louis Renault both think this

¹ Annex 24.

² Annex 36.

³ Annex 19.

question premature, and consider that its solution will be properly within the jurisdiction of the drafting committee when the latter is formed in plenary meeting.

The President, while recognizing in accordance with the views of the President of the Conference that the committees can only submit opinions to the drafting committee, believes that there can be no harm in the subcommission's giving directions to its committee in accordance with the desire of his Excellency Mr. CARLIN.

The meeting adjourns at noon.

FOURTH MEETING

JULY 19, 1907

His Excellency Mr. T. M. C. Asser presiding.

The meeting opens at 10:50 o'clock.

The **President** having asked if all the members had punctually received the second proof of the minutes of the preceding meeting and if anyone had any remarks to make in regard to them, his Excellency Mr. Carlin requests the floor to say that the second proof had taken no account of the observations he had indicated on the first. He hopes that the third will mention them and with this reservation he accepts the minutes.

The **President** then takes the floor to express his regrets about the misunderstanding which occurred between himself and his Excellency Mr. MÉREY VON KAPOŠ-MÉRE at the last meeting regarding the order of the votes relative to the French proposition and the Netherland amendment on the opening of hostilities. He had not understood that his Excellency the first delegate of Austria-Hungary had asked that this question be settled by a preliminary vote of the subcommission, and that is why he could not comply with his desire.

His Excellency Mr. Mérey von Kapos-Mére thanks the President for his courteous explanation and declares himself entirely satisfied with it.

The **President** then declares the minutes of the meeting of July 12 adopted.

He next informs the subcommission that in accordance with the order of the day the discussion is opened on the draft regulations relative to the rights and duties of neutrals on land.¹ He thanks the Secretariat for the care with which it prepared the synoptic table² of the propositions concerning this subject submitted by the various delegations. The proposition of the Belgian delegation³ having been submitted too late to figure on this table, it has fortunately been possible to mention it in the revised proof which has just been distributed.

He proposes, as a method of procedure for the general discussion of the French proposition which heads the program for the day and the various amendments relating to it, that the subcommission limit itself to a wholly provisional exchange of views not to be followed by any vote, referring the final [180] examination of these questions to a committee of examination whose members shall be chosen at the end of the meeting.

This method of procedure is adopted.

The floor is given to General Amourel who reads the following statement of the reasons in support of the proposition of the French delegation relative to the "rights and duties of neutrals."⁴

¹ Draft regulations relative to the rights and duties of neutrals on land; see also *ante*, Second Commission, third meeting, pp. 31-37 [33-40].

² Annex 33.

³ Annex 30.

⁴ Annex 24.

The Hague Regulations of 1899 respecting the laws and customs of war on land deal with the question of neutrals only from the point of view of interned and wounded belligerents.

There are however at the present time a certain number of generally admitted principles relative to the rights and duties of neutrals by which the States are inspired in their declarations of neutrality made on the occasions of conflicts in which they have no intention of taking part. But the application of these principles may differ in certain respects in the different States; and it would certainly be advantageous to add to the portion of the international code of war so brilliantly elaborated in 1899, regulations respecting the rights and duties of neutrals.

The proposition which the French delegation has the honor to submit to your consideration is no other than a draft of these regulations. It contains only provisions generally admitted by lawyers and sanctioned by usage.

This text doubtless will be criticized for failing to provide for everything. It is quite possible that the Powers may be obliged to add to it provisions setting forth all the conditions under which they intend, when occasion arises, to exercise their neutrality. But if our proposition could meet with unanimous approval, the Powers would have as a point of departure an established and already familiar groundwork common to all, possessing the great superiority of having originated in calm and free discussion.

His Excellency Mr. **van den Heuvel** reads the following declaration by which the Belgian delegation supports the principle of the French proposition:

The Belgian delegation desires to say at the beginning of this discussion that it joins in support of the principles expressed in the proposition of the French delegation. The principal object of the amendments¹ which it submits to this proposition and to the various amendments presented is to call attention to the fact that neutrals not only have duties but that they also have rights. Being themselves strangers to the hostilities they have the primordial right to demand that they be not implicated in them directly or indirectly.

Their territory is inviolable and it is well to put this stipulation at the head of the provisions regulating their situation.

The object of several of the duties of neutral States is to prevent them from tolerating within their territory improper conduct on the part of belligerents.

It is well, therefore, not to confine ourselves to an assertion that neutrals are bound to prevent such acts. It is important to declare that the obligations of neutrals in this regard flow from an inhibition of general application which logically concerns belligerents primarily before affecting neutrals.

No one else desiring to participate in the general discussion, the subcommission passes to the discussion of the articles.

The **President** recalls that in accordance with the method of procedure adopted the French proposition is to serve as a basis of discussion, and he proposes consequently to follow the order of these articles, taking account of the different amendments relating thereto as they are examined.

[181] He calls attention to the fact that the proposition of the delegation of Belgium relating to Article 1, and asking that a declaration be placed at the head of the rules on neutrality stipulating that "the territory of neutral States is inviolable," is independent and might be made the subject of a separate discussion.

¹ Annex 30.

As no one requests to speak on this first amendment the **PRESIDENT** declares it adopted in principle.

His Excellency Lord **Reay** requests the floor in order to explain the terms of the British amendment to the title of the draft regulations¹ before passing to the discussion of Article 1.

The **President** having stated that it would be better to reserve this question until the end of the discussion in accordance with the parliamentary custom of the legislative assemblies of Great Britain and the Netherlands, his Excellency Lord **REAY** makes no objection to this arrangement.

The first article of the French proposition being under discussion, Colonel **Borel** takes the floor to explain and develop the amendment of the Swiss delegation.²

He declares in the first place that he is in accord with the French delegation regarding the principle of its proposition and that the amendments he desires to make respecting it tend in no way to modify its scope, but rather tend to develop it and clearly specify its consequences. The formula proposed by the French delegation for Article 1 appears, *a contrario*, to carry the implication that a neutral State could rightly be held responsible for unneutral acts committed on its territory. Now it is undeniable that a neutral State has no other obligation than to repress acts in violation of neutrality which might be committed on its territory, and this obligation is limited by its frontiers. The purpose of the Swiss proposition is to make this clear. Its form of expression is similar on this point to the Belgian proposition and it could easily be combined with the latter.

Following an observation of his Excellency Mr. **van den Heuvel** to the effect that this is only a question of form and not of substance, and that the two amendments of the Swiss and Belgian delegations answer the same purpose, Major General **Amourel** announces that the French delegation accepts the Belgian amendment.

This acceptance is then recorded by the **President**, who states at the same time that the Swiss and Belgian amendments are identical save for wording.

His Excellency Mr. **Keiroku Tsudzuki** declares that the delegation of Japan, in giving its adhesion to the Swiss proposition under the reservation that the words "*committed on its own territory*" be replaced by the words "*under its jurisdiction*," explains that this amendment has reference to acts committed within the territory of protectorates which come under the jurisdiction of the neutral State.

The **President** observes that the Swiss text appears to be replaced by the Belgian text.

Colonel **Borel** thinks that there is no occasion for discussing at present the question of wording, which has been referred to the committee of examination, and it is sufficient to reach an agreement as to the principle. In this regard there can no longer be any doubt, it seems, as to the essential point that a neutral State can be held responsible for acts committed in violation of neutrality only when

they are committed on territory subject to its *national jurisdiction*. If [182] the question could be raised beyond this limit, which seems improbable,

this could only be with respect to acts committed by nationals. This question is settled in the negative by the Belgian text which the Swiss delegation willingly supports on this point.

¹ Annex 25.

² Annex 26.

The **President** remarks that under these conditions it is necessary to submit to the committee the observation of his Excellency Mr. TSUDZUKI, and he places it on record.

Mr. **Louis Renault** supports these observations, pointing out that if there is no disagreement as to the substance it will perhaps be necessary to change the form a little. The essential idea, he says, is that a neutral State can be held responsible for acts committed by its *ressortissants* within the territory over which it exercises authority, but that its responsibility stops at the limits of its jurisdiction.

His Excellency Mr. **Nelidow** asks if there is not a misunderstanding as to substance rather than as to form in view of the fundamental difference between the French and Swiss wordings. The first concerns acts committed by subjects of the neutral State on its own territory, while the second has reference to acts committed on the territory of the neutral State not only by its subjects but by foreigners as well.

Mr. **Louis Renault** agrees with the President of the Conference as to this point and admits that the French text is perhaps too restrictive; he recalls that the French delegation has already explained its views on this subject in supporting the Belgian text. In so far as the question of principle is concerned, when an act in violation of neutrality has been committed on a territory, such as, for instance, the opening of a recruiting agency, it matters little whether it has been done by nationals or by foreigners for in either case it comes under the jurisdiction of the police of the State.

His Excellency Mr. **Carlin** points out that in accordance with the statement of his Excellency Mr. TSUDZUKI the acceptance of the Belgian text (which figures as Article 8 in the synoptic table) is made conditional upon the substitution of the words "*committed by its nationals outside of the territory over which it exercises its jurisdiction*" in place of the words "*committed by its nationals outside its own territory*."

The **President** announces that the observation of his Excellency Mr. **CARLIN** will be submitted to the committee.

His Excellency Mr. **Keiroku Tsudzuki** expresses the wish that the committee take into consideration his remarks concerning acts committed by the *ressortissants* of a neutral State within territories in which they enjoy the privileges of extraterritoriality and are under its jurisdiction.

As no one requests the floor the examination of Article 2 of the French proposition is taken up. Two amendments have been submitted regarding this proposition by the delegations of Switzerland and Belgium.¹

Colonel **Borel** declares that he favors the principle of the French proposition but finds the second sentence of the text under discussion incomplete. It is necessary to provide for other cases than those mentioned. In addition to the nationals of the neutral State it is necessary to take into consideration other neutral States and especially those *ressortissants* of the belligerent States who cross the frontier to return to their own country in order to fulfill their military obligations.

It is important to make a distinction between the recruiting or organizing of groups of combatants on the territory of the neutral State and the crossing of the frontier separately by individuals. The Swiss wording makes this necessary distinction. The control of individual passages can, moreover, never

¹ Annexes 26 and 30.

[183] be carried into practice for it is impossible to scrutinize the intentions of each one and an attempt to exercise such control would raise intolerable obstacles to the passage of individuals from one State to another.

His Excellency Baron **Marschall von Bieberstein** declares that the German delegation approves the French proposition in general but it feels that it must make a reservation with regard to the neutral persons referred to in Articles 64 and 65 of its proposition relative to the addition of a Section V to the Regulations respecting the laws and customs of war on land. The object of that proposition is to forbid neutral persons from rendering war services to belligerents, and the second part of the French text does not make this point sufficiently clear. It is therefore necessary to reserve the question of the service of neutral persons in the ranks of belligerents.

Mr. **Louis Renault**, who requested the floor at the same time as his Excellency Baron **MARSCHALL VON BIEBERSTEIN**, states that he proposes only to reply to Colonel **BOREL** in formulating in the name of the French delegation reservations similar to those of Baron **MARSCHALL**. He adds that a neutral State cannot be required to prevent the *ressortissants* of another country from going individually to take service in the ranks of one of the belligerents.

The **President** states that agreement seems to be reached as to the principle and places on record the reservations made by Baron **MARSCHALL VON BIEBERSTEIN**.

His Excellency Mr. **van den Heuvel** calls attention to the fact that the Belgian text (listed as Article 3) repeats the terms of the French and Swiss texts but gives a more explicit expression to the rule; it makes the prohibition as applicable to the combatant as to the neutral. The French and Swiss propositions stipulate that the neutral must not allow certain things to be done; the Belgian proposition provides a general prohibition against the belligerent's doing certain things and against the neutral's allowing them to be done; they were in accord on these two points without saying so; the accord will be all the more complete if expressed.

Article 3 of the French proposition is taken up for discussion along with the Belgian amendment relating thereto (Article 5 of the table).¹

His Excellency Mr. **van den Heuvel** does not believe that this amendment can give rise to any objections. It only completes the idea of the French proposition relative to the protection of commerce. The latter ought not to be limited to export but should also extend to transport.

Major General **Amourel** declares that the French delegation accepts the wording proposed by the Belgian delegation.

The **President** places on discussion Article 4 of the French proposition to which four amendments have been submitted by the delegations of Great Britain, Switzerland, the Netherlands, and Belgium.²

In accordance with the order of these amendments his Excellency Lord **Reay** first takes the floor.

He points out that the English amendment gives a necessary extension to the French wording by providing for the case of prisoners who would escape *from enemy territory occupied by a belligerent*.

Major General **Amourel** accepts this amendment in the name of the French delegation.

¹ Annex 33.

² Annexes 25, 26, 27, 30.

Colonel Borel explains the reasons in support of the Swiss amendment which stipulates that "prisoners who . . . arrive in a neutral country shall [184] be left free, *if the neutral State receives them and allows them to remain, which it is not obliged to do.*"

The original wording seems to create an absolute right to asylum and liberty in favor of the fugitive, which is evidently not the intention of the authors of the French proposition, for it is necessary on the contrary to recognize the sovereignty of the neutral State and to admit its right to refuse to allow the presence of fugitives in certain cases in which they might be an element of trouble. It is evident, moreover, that neutral States will always make it a duty of humanity to welcome fugitives in as large a measure as possible.

Mr. Louis Renault states that the French delegation objects only to the form of the amendment asked for and not to the principle. There can be no question of restricting in such a case the right of expulsion which States possess, but there is a question of form involved here which it is the duty of the committee of examination to decide.

His Excellency Lieutenant General Jonkheer den Beer Poortugael explains the amendment of the Netherland delegation relative to prisoners who arrive in a neutral country "*as prisoners of war of an armed force that has taken refuge in the neutral territory.*" He explains that the principle which has been admitted in the case of prisoners who escaped separately, should all the more forcibly apply to those who arrive *en masse* under the guard of an armed force.

Major General Amourel declares his acceptance of this amendment.

His Excellency Mr. van den Heuvel takes the floor to elucidate the Belgian amendment. The persons concerned, he says, are those referred to in the French proposition and in the English, Swiss and Netherland amendments. The Belgian text differs from the latter only in regard to the conditions that should be established with respect to the refugees. There is certainly no occasion to treat them as prisoners for the neutral cannot act as the agent of one of the belligerents. But the question of the residence of these refugees may be important in certain circumstances, especially when they present themselves in groups of several thousands, when they are excited by the ardor of recent combats, or when they make a claim to be allowed to remain near frontiers which are in the vicinity of hostile operations. On general grounds the State, which out of humane considerations renounces its right to drive them back and expel them and which instead receives them and leaves them at liberty, ought to be able to assign them a place of residence without subjecting itself to any reproach in this respect.

Mr. Louis Renault declares that he can under no condition accept this amendment which, in the form in which it is presented, operates directly against the purpose which the French text was designed to accomplish. If he is in agreement with the Swiss amendment in recognizing that the neutral State has the right to refuse to keep refugees in its territory, he cannot admit that it has the choice of leaving them at liberty or of assigning them a residence. This would be, moreover, rendering it a bad service for it might very often be suspected of sympathy for one of the belligerents according to the course it adopted. It would therefore be necessary to specify first of all that the refugees shall be free to choose between accepting the residence assigned to them or departing

from the territory, conformably to the latitude allowed political refugees when they are forbidden to reside in the vicinity of certain frontiers.

His Excellency Mr. **van den Heuvel** believes that the disagreement consists only in a question of wording.

[185] Mr. **Louis Renault** insists that the option allowed the neutral States by the Belgian text might be dangerous for them. He considers that the common law should be sufficient for refugee prisoners.

Mr. **de Beaufort** declares that he shares the opinion of Mr. **LOUIS RENAULT** and that such an option might have grievous consequences for the maintenance of neutrality.

Colonel **Borel** calls attention to the fact that the Swiss amendment gives the neutral States all the necessary guaranties in regard to fugitives by stipulating that they are not obliged to receive them.

As to the Netherland amendment concerning enemy prisoners brought into neutral territory by a troop taking refuge there, it is well to observe that the case thus foreseen should be regulated by Articles 57 *et seq.* of the 1899 Regulations dealing with the internment on neutral territory of troops belonging to the belligerent armies.

If the amendment of the Netherland delegation is adopted, as is desired by the Swiss delegation which has instructions to accept it, it would be necessary to revise the second paragraph of Article 59, which imposes upon the neutral State the obligation of guarding the sick or wounded brought into its territory by belligerents belonging to the hostile party "*so as to ensure their not taking part again in the operations of the war.*"

It seems that an antinomy would thus be created which it would be necessary to eliminate.

His Excellency Mr. **van den Heuvel**, returning to his proposition, repeats that there can be nothing more than a misunderstanding between him and Mr. **LOUIS RENAULT**. The fugitive who refuses to take up the residence assigned to him is not a prisoner and can leave the country. He is therefore free to choose which he prefers. But on the other hand the neutral Government must be able to preserve the liberty of assigning a place of residence to him in virtue of the obligation incumbent upon it of maintaining order and because of the rights which its sovereignty confers upon it regarding foreigners. It is the duty of the committee of examination to find a satisfactory formula.

The President declares that in so far as the antinomies pointed out by Colonel **BOREL** are concerned, the drafting committee which is to be formed at the next plenary meeting, will have this very duty of avoiding such inconsistencies by enlightening the various commissions regarding their respective labors.

Mr. **Louis Renault** observes that there is no inconsistency between the solution advocated by the Netherland proposition and the provisions of Article 59. The first concerns prisoners brought in by a belligerent seeking to escape from pursuit, while the second concerns the sick or wounded committed to the care of the neutrals.

Nor can there be any contradiction in principle, according to his opinion, between the liberty which must be assured to refugees and the liberty which must be left to neutral States in accordance with the principles of neutrality.

His Excellency Lieutenant General **Jonkheer den Beer Poortugael** thinks

that the present discussion has in view other persons than those referred to in the fourth section of the 1899 Regulations (Articles 57 and 59), which treats of the internment of belligerents and the care of the wounded in neutral countries.

The **President** declares that the committee of examination will take these points into consideration and will be able to find a formula.

He announces that the discussion of the four articles of the French proposition is concluded and that in accordance with the adopted course of procedure the next subjects for consideration will be the new propositions made by the various delegations.

[186] The German proposition,¹ presented in the form of a new Article 4a, is first taken up for examination. It is thus worded:

A neutral State is not called upon to forbid or restrict the use, on behalf of the belligerent parties, of cables and telegraphs, including wireless telegraphy, located in its territory.

Every prohibition or restriction shall be applied indifferently to both belligerent parties.

The provisions of the two preceding paragraphs are also applicable to cables and telegraphs, including wireless, belonging to companies or private individuals.

His Excellency **Baron Marschall von Bieberstein** explains his proposition as follows:

I shall permit myself to say a few words regarding the article that we are proposing to add to the French draft. This article concerns the employment of cables and telegraphs located on the territory of a neutral State in the exchange of dispatches between the authorities and the armed forces of a belligerent. The proposition is explained by the same considerations that inspired the provisions of the French project. The problem is to remove, by the establishment of clear and fixed rules, the causes of differences which might arise between the belligerent and the neutral.

According to our proposition the neutral State shall have full liberty and independence in determining whether or not and in what measure the belligerents shall be authorized to make use of telegraphic installations established on its territory.

If on the contrary it should be demanded that the neutral State control the telegraphic correspondence of the belligerents and not allow the transmission of communications relating to military operations, there would be imposed upon it an obligation which it would scarcely be able to fulfill. In practice this control could always be evaded in one way or another.

One single proviso ought to be made to the principle that neutral States are at liberty to regulate the use of their telegraph systems by belligerents. The duty of impartiality inherent in the notion of neutrality imposes an absolute requirement upon them to preserve perfect equality of treatment towards the belligerents. Any restrictions that a neutral State may deem it expedient to impose on the freedom of the telegraphic communications of one of the parties should therefore be similarly applied to the correspondence of the other belligerent.

¹ Annex 29.

It is well understood that the rules which we are proposing are to apply equally to States where the operation of the telegraph lines forms a branch of the public administration and to those where it is left to companies or to private persons. In the former it devolves upon the Government itself to perform the duties incumbent upon it; in the latter the State would be responsible for the acts of the companies or individuals and would have to prevent any violation of neutrality on their part.

Major General Yermolow declares that the Russian delegation supports the German proposition.

His Excellency Mr. van den Heuvel offers the following explanation of the Belgian proposition relative to this same subject, which is listed in the synoptic table¹ as Article 6.

A neutral State is not called upon to forbid or restrict *the use, for communicating with belligerent parties, of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or to private individuals.*

The prohibitions or restrictions *which may be established* must be applied *impartially* to both belligerent parties.

[187] He calls attention to the fact that the text of this proposition serves a double purpose. It concerns in the first place a question of principle since its object is to declare that telephone cables shall be subject to the same regulations as telegraph cables; and in the second place a question of form in that it has for its purpose the removal of all misunderstanding in regard to the German text.

In order to accede to certain suggestions that have just been presented he is entirely willing to replace the words "for communicating with belligerent parties" by the words "on behalf of belligerent parties."

His Excellency Lord Reay states that the British delegation is of the same opinion as the German delegation concerning the principle in question, but it proposes a reservation specifying that "the liberty of a neutral State to transmit messages, by means of its telegraph lines on land, its submarine cables or its wireless apparatus, does not imply that it has any right to use them or permit their use in order to render manifest assistance to one of the belligerents."

The President records this reservation of Lord REAY and believes he can depart from his position of impartiality to the extent of felicitating himself upon the accord which is established on this point.

His Excellency Lord Reay offers some explanations in regard to the British proposition² listed in the synoptic table as Article 5 and worded as follows:

A neutral State is bound to prevent the erection on its territory of a wireless telegraph station or any other apparatus for the purpose of communicating with belligerent forces on land or on sea.

He calls attention to the fact that this proposition is not at all in conflict with the German proposition.

His Excellency Mr. van den Heuvel explains that the Belgian amendment relative to the same subject is intended to clearly bring out the fact that this

¹ Annex 33.

² Annex 25.

is likewise a question of a general prohibition concerning first the belligerent and then the neutral.

His Excellency Mr. Keiroku Tsudzuki requests that the attention of the committee of examination be directed to some observations which the Japanese delegation desires to make along the line of thought which inspired the English and Belgian amendments. It believes, in fact, that the prohibitions relative to radiotelegraphic installations and recruiting agencies should be extended to bases of supplies, military depots, etc.

The President records the observation of the first delegate of Japan and states that it will be taken into consideration by the committee.

The Netherland proposition¹ appearing as Article 5 in the synoptic table, is briefly explained by his Excellency Lieutenant General Jonkheer den Beer Poortugael who calls attention to the fact that after having considered the situation of persons who arrive in a neutral country after escaping from the territory of belligerents, it is necessary to consider the question of *matériel*. This must be retained by the neutral State into whose territory it has been brought as long as hostilities last, but must be restored when peace is reestablished.

His Excellency Mr. van den Heuvel believes that the Commission, in undertaking a discussion of principle on the question raised by the Netherland amendment, would encounter serious difficulties by reason of the principles relating to transfer of property which are involved. Is it not true that material [188] taken from the enemy becomes the property of the one who has taken it; and does this material cease to belong to the captor and return of right to the other party because the captor passes into neutral territory? It is better that the neutral State should not take it upon itself to settle this question but should leave it to be decided by the parties in question at the end of the hostilities.

Lieutenant Colonel van Oordt reads the following note indicating the intermediate position which the Netherland delegation thinks it best to adopt on this point.

It has appeared desirable to the Netherland delegation to stipulate a regulation for neutrals regarding war material brought into neutral territory by an armed force taking refuge there. The truth is that there is no uniformity of opinion as to what should be done with this material, and the Regulations of July 29, 1899, in Section 4, are silent on this point.

There are three principles:

First, according to some, the material should be restored with as little delay as possible, since—they say—the armed force which takes refuge on neutral territory loses the power of retaining this material, while its adversary has been deprived of the opportunity of recovering it at the very moment that there seemed to be a reasonable prospect of the realization of this opportunity.

On the other hand, there are those who advocate the principle that material once taken from an enemy becomes, by the laws of war, the property of the armed force which has taken it, and that, consequently, such material must be classed among all the other war material belonging to an armed force which crosses the neutral frontier to find asylum, that is to say, it must be guarded by the neutral Government until after the conclusion of peace, when arrange-

¹ Annex 27.

ments will be made for its restoration to the State to which the armed force belongs. In his remarkable work, *International Law*,¹ Professor OPPENHEIM says, for example:

It can likewise happen during war that war material, originally the property of one of the belligerents but seized and appropriated by the enemy, is brought by the latter into neutral territory. Does such material, through coming into neutral territory, become free, and must it be restored to its original owner, or must it be retained by the neutral and after the war be restored to the belligerent who brought it into the neutral territory? In analogy with prisoners of war who become free through being brought into neutral territory, it is maintained that such war material becomes free and must be restored to its original owner. To this, however, I cannot agree. Since war material becomes through seizure by the enemy his property and remains his property unless the other party re-seizes and thereby re-appropriates it, there is no reason for its reverting to its original owner upon transportation into neutral territory.

There we have the two diametrically opposed opinions.

There is another and intermediate opinion to the effect that although it is admitted that the armed force has lost the power to retain possession of the material taken from the enemy, yet it would be going too far to hold that it should be returned immediately to the latter and in any case during the existence of the war, since it cannot be denied that in the case of war material in time of war its capture from the enemy does at all events confer some rights.

The Netherland delegation has favored the settlement of the question along what may be termed the intermediate line, that is to say, that the war material taken from the enemy and brought into neutral territory by an armed force taking refuge there shall be forfeited by this armed force but shall not be restored to its enemy until after the conclusion of peace.

There is still another practical consideration in favor of this solution of the question. If a belligerent knows that the arms, carriages or other material taken from the enemy will be restored to the latter immediately after his [189] passage on to neutral territory, he will do all in his power to destroy this material, whereas if he knows that the enemy will no longer be able to make use of it during the war there is no reason for him to cause this destruction.

In any case it would be desirable for the neutrals to have a fixed rule of conduct which, I repeat, does not now exist owing to the differences of opinion regarding this question.

Colonel BOREL observes that there seems to be agreement as to the one point that war material brought into the territory of the neutral State must be retained there for the duration of hostilities. As to the second point relative to the ownership of this material, this is a subject of controversy and one searches in vain for any reason why the neutral State should concern itself about it before the conclusion of peace. And after that, would it not be better to let the belligerents themselves settle the question?

The English proposition,² listed as Article 6, and the Belgian proposition,³ listed as Article 2, give rise to the declaration on the part of their Excellencies

¹Oppenheim, *International Law*, 1st ed., 1906, vol. ii, pp. 367-368.

²Annex 25.

³Annex 30.

Lord Reay and Mr. van den Heuvel that these texts are identical in principle and differ only in form.

As no one offers any remarks the President refers them to the committee of examination.

Article 7 of the Netherland proposition¹ is then taken up for discussion. It provides that:

If a neutral State, in order to fulfill duties imposed by neutrality, is obliged to have recourse to arms, this act shall not be deemed a hostile act.

His Excellency Lieutenant General Jonkheer den Beer Poortugael declares that it is unfortunate enough that a neutral State should be obliged to resort to armed force to secure respect for its rights and especially to perform its duties, without having such a measure regarded as a hostile act. He adds that a neutral State will never have recourse to this necessary step unless positively forced thereto by the belligerents. No imputation of having committed a hostile act can be laid to it, since the responsibility for the action taken does not rest with it.

His Excellency Mr. van den Heuvel wonders if it is necessary to insert the Netherland proposition. It is clear, he says, that if a neutral State has rights and duties to fulfill it ought to have means of carrying them out. If it employs these means certainly no one can regard it as a grievance.

Colonel Ting reads the following declaration:

The delegation of China, having followed with much interest the discussion of the projects presented for the consideration of the Conference, desires to declare that it accepts Articles 1, 2 and 3 of the French proposition, as well as the English amendment to Article 4, but that it reserves its decision on the other articles.

The President places Colonel TING's declaration on record.

The discussion of the various amendments being concluded, his Excellency Lord Reay takes the floor to explain the British amendment to the title of the draft, thus worded:

Draft Regulations on the rights and duties of neutral *States* on land.

He is pleased to acknowledge that the PRESIDENT acted wisely in referring this question to the end of the discussion for it has removed all the doubts which might have arisen in regard to the British amendment, the project referring [190] to neutral States and not to neutral subjects. The question is therefore referred to the committee of examination.

The President then designates the members of this committee, being guided in his choice by the questions that it will have to examine and taking into consideration not only those which have been discussed to-day but those which will come up for discussion in the next meetings. All the delegations which have submitted a proposition will therefore be represented in the committee. The latter will include, besides the members of the bureau of the Second Commission:

Major General VON GÜNDELL,

His Excellency Mr. MÉREY VON KAPO-S-MÉRE,

His Excellency Mr. VAN DEN HEUVEL.

Mr. LOUIS RENAULT,

His Excellency Lord REAY,

¹ Annex 28.

His Excellency Mr. KEIROKU TSUDZUKI,

His Excellency Mr. EYSCHEN,

His Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL,

His Excellency Mr. CARLIN.

These designations are approved.

Before adjourning the meeting, the PRESIDENT asks if it would be well to appoint a reporter in accordance with Article 4 of the Regulations of the Conference. He thinks it best to postpone this question to a following meeting, meanwhile requesting the committee of examination to express an opinion on this subject.

The meeting adjourns at 12:20 o'clock.

FIFTH MEETING

JULY 26, 1907

His Excellency Mr. T. M. C. Asser presiding.

The meeting opens at 10:50 o'clock.

The **President** asks if all the members of the subcommission have received the first proof of the minutes of the preceding meeting and if anyone has any observations to make verbally.

No one requesting the floor, he declares these minutes adopted.

He then announces that His Excellency Mr. MÉREY VON KAPOS-MÉRE is prevented by his work from becoming a member of the committee of examination of the second subcommission, and he proposes to appoint in his place Major General Baron GIESL VON GIESLINGEN. As no one objects to this proposal he declares that the composition of the committee will be thus modified.

The order of the day calling for the discussion of the German proposition regarding the *treatment of neutral persons in the territory of belligerent parties*¹ and the amendments relative thereto² the **PRESIDENT** thanks the secretariat for the promptness and care with which it has prepared the synoptic table which is to serve as a basis for the discussion.³

He adds that conformably to what has been done in regard to the other questions the discussion which is to take place will have a general character and will bear only on the content of the articles, without its being necessary to consider the matter of their form, which will be the duty of the committee of examination.

The floor is given to his Excellency Baron **Marschall von Bieberstein** who reads the following declaration in support of the German amendment:

The object of the German delegation in presenting the project for the regulations regarding the treatment of neutral persons in the territory of belligerents is to furnish a basis for the deliberations on the rights of neutrals on land with reference to a kind of question in regard to which disputes are particularly frequent.

In the majority of States there are hundreds of thousands of inhabitants belonging to another nationality, who, for various reasons, have come to [192] settle for a longer or shorter time in a foreign land. There are others who, while not residing in the foreign country, are interested in some business enterprise, and own lands or other wealth within it. The interests of all these people are affected from the moment when the State which accords them its hospitality becomes engaged in war.

¹ Annex 36, Neutral persons in the territory of belligerent parties; see also *ante*, Second Commission, pp. 37-93 [40-98].

² Annexes 37-42

³ Annex 43.

What is then their position with respect to the belligerents? What treatment shall they receive? Can they be enrolled in the ranks of the belligerents' armies, and render to them other personal services in promoting the war? Have they a right to indemnity if, in the course of the hostilities, their lands are devastated, their property destroyed? And should they contribute to the supply of the military wants of the belligerents?

It is true that the answer to some of these questions is found in the Regulations respecting the laws and customs of war on land, and others are determined by special treaties. But for the majority of these questions, the principles applied by the various Governments are not harmonious, and, in each war, this discord gives rise to disputes between the belligerents and the neutral States protecting the claims of their subjects. It would seem desirable, then, to put an end to this uncertainty by adopting rules which, while not disregarding military necessities, shall recognize the just claims of neutral States.

With these considerations in view we have worked out our propositions which might properly be added to the Regulations respecting the laws and customs of war on land.

The first chapter defines a neutral person. The point is to establish as a principle that the subjects of a neutral State must not be considered as enemies, whatever be their place of domicile. The tie of allegiance which unites them to a neutral State creates in their favor a special status admitting of rights and duties. There will also have to be considered the case in which they transgress the rules prescribed for them. The most natural result of such an infraction would be the loss of the privileges of neutrality.

The second and third chapters contain provisions which might be adopted with reference to the treatment of neutral persons and with respect to their property.

First of all, the subjects of neutral States should not be admitted into the armies of belligerents. It seems to us equally contrary to the acknowledged interests of belligerents and of neutral States for the *ressortissants* of the latter to enlist in the ranks of a belligerent army. If their participation in the war were recognized as lawful one should expect to see adventurers from all parts of the world flock to the colors of the belligerents. The presence of such elements in national armies would constitute a danger to discipline and would make it impossible for belligerents to guarantee conscientious application of the humanitarian rules prescribed by the Convention of 1899. Moreover, the fact that subjects of a neutral State bear arms against one of the belligerents would not be without influence on the relations between the Governments and might lead to serious complications. We propose, therefore, that the Governments bind themselves on the one hand not to admit neutral persons into their ranks when they are at war and, on the other hand, to forbid their subjects to bear arms in a war between two foreign States.

As for services, other than war services, which the belligerents might need, it should likewise be forbidden to force the neutral *ressortissants* to render them to the belligerents.

However, an exception should be made with respect to sanitary services and sanitary police which the neutral subjects would be required to render to the belligerents even against their will, and which would be paid for in cash.

ARTICLE 61

All the *ressortissants* of a State which is not taking part in a war are considered as neutral persons.

His Excellency Mr. **Hagerup** asks if the meaning of the words . . . "*all the ressortissants of a State . . .*" is sufficiently clear, and if it applies only to nationals or is also to be applied to persons who are domiciled in the territory of the State.

Mr. **Louis Renault**, while leaving to his Excellency Baron **MARSCHALL VON BIEBERSTEIN** the matter of defending the text proposed by the German delegation, believes it useful to explain the meaning of the word *ressortissants* which, according to the French terminology, applies only to nationals, the term *non-ressortissants* designating by contrast all the persons who are not under the subjection of the State. There can be no doubt, therefore, as to the form of the article whether there is or is not agreement as to the substance.

His Excellency Mr. **Hagerup** thanks Mr. **LOUIS RENAULT** for his explanations; but he continues to believe that the text proposed by the German delegation needs to be revised, for it allows a doubt to exist as to the very principle [195] of the question in so far as concerns persons who are domiciled in the territory of a belligerent State but who are not its nationals. This question is of special importance in connection with Article 64.

His Excellency Mr. **A. Beernaert** also believes that the wording proposed by the German delegation can give rise to ambiguity for the word *ressortissants*, which is rather insufficiently defined, has been used in some cases—three or four times at least,—in a more general sense than that which has just been given it.

Owing to the importance of the question, he proposes, therefore, to modify the text of Article 61 by replacing the word *ressortissants* by the word *nationals*.

Colonel **Borel** having expressed the opinion that this question might be referred to the committee of examination, whose duty it will be to find a satisfactory wording, his Excellency Mr. **A. Beernaert** observes that there is no necessity for doing so if agreement can be reached immediately.

After some further remarks from Mr. **Louis Renault**, who maintains his point of view and appeals to the memory of his Excellency Mr. **ASSER** who, if his position of President permitted him to do so, could state that in all the conventions of private international law in the wording of which they have collaborated, the word *ressortissants* has been used only in the sense of *nationals*, the **President** asks if anyone is opposed to referring the question to the committee.

As no one objects to this proposal the **PRESIDENT** announces that it is thus decided and states that there seems to be agreement as to the terms of the article and the ideas contained therein.

He then reads Article 62 as well as the Swiss amendment thereto.¹

¹ Annex 38.

ARTICLE 62 (GERMAN TEXT)

A violation of neutrality involves loss of character as a neutral person with respect to both belligerents. There is a violation of neutrality:

a) If the neutral person commits hostile acts against one of the belligerent parties;

b) If he commits acts in favor of one of the belligerent parties, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2).

ARTICLE 62 (SWISS TEXT)

A neutral person can no longer *avail himself of his neutrality and of the special privileges resulting therefrom according to the terms of Articles 64-72:*

a) If he commits hostile acts against a belligerent party;

b) If he commits acts in favor of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2).

In such a case, the neutral person shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality, than a "ressortissant" of the other belligerent State could be for the same act.

[196] Colonel Borel declares that, although he has not taken part in the general discussion, he desires in the name of the Swiss delegation to do homage to the just and generous idea which inspired the project presented by the German delegation:

This proposition responds directly to the generous and humanitarian tendency which is seeking to reduce the field of action of hostilities and, consequently, the evils of war. From this viewpoint one cannot fail to recognize the essential difference which exists between the *ressortissants* of a belligerent State and the neutral persons who inhabit the territory of that State but who are not, like the former, attached to it by the juridical bond of nationality. And if the *ressortissants* of the belligerent States can not escape suffering from the effects of the war within the limits stipulated in their favor in the tutelary provisions of the 1899 Regulations, is it not just, in dealing with neutrals, to take into consideration the difference which has just been pointed out and exempt them from the rigors of war which with respect to them are wholly unjustified?

In this respect the German project is absolutely just and, moreover, it has the practical advantage of thus encouraging neutrals themselves to observe neutrality.

The amendment to Article 62 presented by the Swiss delegation avoids the term "violation of neutrality," which appears out of place here as it applies rather to acts by which a belligerent would injure the neutrality of a third party. The neutral person who does not observe neutrality ceases, by that fact, to be neutral without rendering himself thereby guilty of a special infraction. The acts which he might happen to commit against a belligerent State can never be measured and judged except on their own merits, independently of the fact that their author was neutral, and the latter can never, on this account, be more severely treated than a *ressortissant* of the other belligerent State could be for the same act. In other words, the failure to observe neutrality implies in itself alone no other consequence for the neutral than the loss of his neutral character and the advantages attaching thereto. This is what his Excellency the

first delegate of Germany himself stated in the very clear and concise explanation we have just heard, and it would not be amiss to state it in Article 62, as the Swiss delegation proposes.

The **President** proposes that the Swiss amendment be referred to the committee which will examine the question of wording, as has been done in the case of the Belgian amendment to the French proposition on the rights and duties of neutrals on land. The new paragraph remains to be discussed.

Mr. Louis Renault requests the floor, not to discuss the wording of the Swiss amendment, for he agrees with Colonel **BOREL** on this point, but to examine the principle of the question.

He desires to declare first of all that he cannot approve of there being created, as has been said, a premium on neutrality. As Lord **REAY** said, the neutral who resides in an invaded territory has no right to privileged treatment, and any special position which may be granted him will be due only to the grace of the invader. We shall have to examine the question anew in the course of the discussion of the articles.

It is the provisions of Article 62 which it is important now to state precisely. Here is a neutral subject who enters the service of a belligerent. What shall be the consequence of this act? It seems to be indicated by what Colonel **BOREL** has said: he shall be treated merely as an enemy, neither better nor worse. But there is another point to be considered in the German proposition. If we designate the belligerents by the letters A and B and the neutral by the letter C, let us suppose that one of the *ressortissants* of the [197] neutral has entered the service of belligerent A. His position with respect to belligerent B is clear, he shall be treated as an enemy; but how shall he be considered with regard to belligerent A? It is said that he shall likewise be considered with respect to the latter as being no longer neutral.

I admit this. But then what shall be his status as far as concerns his property situated on the territory of belligerent A? If this property has been the object of more favorable treatment, why should the fact of his enlistment in the ranks of belligerent A involve a change of treatment, as if the latter were punishing him for it? This would not be logical.

It seems, therefore, that it is sufficient to change the position of neutral C with respect to belligerent B against whom he has taken up arms.

His Excellency Baron **Marschall von Bieberstein** presents a few observations regarding the explanation of **Mr. LOUIS RENAULT**.

He is of opinion that the legal conception of neutrality is absolute: one is neutral or one is not. Consequently, in a war between States A and B the subject of State C, who enters the military service of State A, loses his neutral character not only with respect to State B but also with respect to State A, which enrolls him in its service and pays him. He loses the privileges of neutrality. He should take this into consideration before having himself enrolled.

His Excellency **Mr. A. Beernaert** shares the opinion expressed by **Mr. LOUIS RENAULT**; but the Swiss wording appears to him to remove all difficulties as to form and substance. The German wording did not regulate the situation of the neutrals in case of violation of neutrality. The Swiss wording conveys exactly the idea by which this Article is inspired, and in perfectly correct terms.

His Excellency Baron **Marshall von Bieberstein** declares that he accepts the Swiss amendment.¹

The **President** having indicated that the discussion remained open on the new part of this amendment, Mr. **Pierre Hudicourt** asks for explanations of paragraph *a* regarding *hostile acts*.

Article 62, he says, states two series of causes which make neutrals lose the privileges of neutrality. Paragraph *b* is defined, although in a negative form, in Article 63; while paragraph *a*, with the words "hostile acts," remains rather vague and might, in my opinion, open the door to arbitrary interpretation, for it is difficult to distinguish "*an act in favor of one belligerent party*" which is not at the same time "*hostile*" to the other belligerent party.

I should like, therefore, to know whether in the vagueness of the expression "*hostile act*" would not be embraced, for example, the act of a journalist in publishing unfavorable comments on the war which one belligerent party might consider as a *hostile act*. I am opposed to such an interpretation.

His Excellency Mr. **Carlin** believes that he can reassure the delegate of Haiti. According to Mr. **CARLIN** there can be no doubt as to the case which is troubling Mr. **HUDICOURT**. Such a case can clearly not be interpreted as a hostile act.

An exchange of views takes place on this subject between the **President** and his Excellency Mr. **Beernaert**. They recognize that the expression "*hostile acts*" presents, indeed, a certain vagueness, although it is defined by Article 64 to which the German and Swiss texts refer, but that in the case foreseen by Mr. **HUDICOURT** it can give no cause for doubt.

His Excellency Mr. **Léon Bourgeois** desires to satisfy the fears manifested on the part of Mr. **HUDICOURT** concerning newspaper publications.

[198] It is evident that the publication of comments, even unfavorable, cannot be considered by one of the belligerent parties as a hostile act.

The only act which could be referred to would be the publication of military information of a nature to enlighten one of the belligerent parties as to the operations of the adversary. But it does not seem necessary to establish a distinction on this subject in the text at present under discussion. The point was to state the question clearly, as has just been done in the course of this exchange of views, which has dispelled the apprehensions of the delegate of Haiti by showing that there could be nothing to fear for newspaper comments.

Colonel **Borel** thinks that the objections made to the ambiguity of the words "*hostile acts*" might be taken into account by replacing them with a more precise expression. In short, it can scarcely be a question of any acts but those punishable by the laws of the belligerent State, and use might perhaps be made of the words "*acts punishable by the penal law of the belligerent State against which they are directed.*" That is a point which might recommend itself to the examination of the committee.

The **President** having asked if it was considered necessary to take a special vote on the new paragraph contained in the Swiss amendment, no one objects to its being referred immediately to the committee without a preliminary vote.

The **PRESIDENT** passes to Article 63, which he reads:

¹ Annex 38.

ARTICLE 63

The following acts shall not be considered as committed in favor of one of the belligerent parties in the sense of Article 62, letter *b*:

a) Supplies furnished or loans made to one of the belligerent parties, so far as these supplies or loans do not come from enemy territory or territory occupied by the enemy.

b) Services rendered in matters of police or civil administration.

He thinks it well to ask the German delegation to be kind enough to give an explanation of its wording with reference to loans.

Major General **von Gündell** explains that in Article 63 the German delegation has had in view the case of *ressortissants* of a neutral State residing in the territory of belligerent A and furnishing supplies to the other belligerent B. They cannot be authorized to do so except in case the merchandise does not come from the territory of belligerent A.

Neither can they subscribe to a loan issued by belligerent B.

His Excellency Mr. **A. Beernaert** considers it necessary to be very clear in such a matter. If a banker residing on territory occupied by belligerent A subscribes to a loan issued by belligerent B, how should the clause of paragraph *a*, which provides that a loan must not come from the territory occupied by the enemy, be interpreted? Does it refer to the sending of the funds or of the subscription?

The **President** believes that it will be necessary to modify the wording with a view to answering the remark of his Excellency Mr. **BEERNAERT**, which will be taken into consideration by the committee to which Article 63 is referred.

He then passes to Chapter II of the German draft, entitled "*Services rendered by neutral persons*," and reads Article 64, as well as the Austro-

Hungarian amendment to the second paragraph:

[199] ARTICLE 64 (GERMAN TEXT)

Belligerent parties shall not ask neutral persons to render them war services, even though voluntary.

The following shall be considered as war services: Any assistance by a neutral person in the armed forces of one of the belligerent parties, in the character of combatant or adviser, and, so far as he is placed under the laws, regulations or orders in effect by the said armed force, of other classes also, for example, secretary, workman, cook. Services of an ecclesiastical and sanitary character are excepted.

AUSTRO-HUNGARIAN AMENDMENT ¹

The last sentence of the second paragraph might be worded as follows:

Services of a religious or sanitary nature are excepted, and those which pertain to the domain of the sanitary police, as well as all services rendered by neutrals in the interest of internal order.

Major General Baron **Giesl von Gieslingen** explains that the object of the amendment proposed by the Austro-Hungarian delegation ¹ is simply to add a useful and necessary complement to the last sentence of the German text with a view to extending the exceptions conformably to the idea contained in paragraph *b* of Article 63.

¹ Annex 37.

Major General von Gündell furnishes some explanations as to the wording of Article 64. The second paragraph defines *war services*. The last sentence deals with exceptions.

So far as concerns the latter he will take the liberty of dividing in two the Austro-Hungarian amendment, and of asking that the division be made after the words "*services of a religious or sanitary nature are excepted.*" He will have no objection to accepting this first part but the second appears useless to him for it does not refer to war services but to services of a purely civil nature.

Mr. Louis Renault believes that Articles 64 and 65, which cannot be separated in the discussion, raise a very serious question of principle outside of any question of wording.

The question before us is the situation, as concerns war services, of belligerent parties and neutral Powers with respect to neutral persons. According to the terms of the first paragraph of Article 64, belligerents must not accept these services. On the other hand, Article 65 imposes upon neutral Powers the obligation of forbidding their *ressortissants* to render them. Such are the two aspects of the question.

Under these conditions the French delegation cannot accept the viewpoint of the German delegation. We admit, in fact, says Mr. LOUIS RENAULT, that neutrals can freely enlist and that the belligerents can accept their services without the neutral State, whose *ressortissants* they are, being under obligation to prevent them from so doing. The consequence of this right will naturally be their complete assimilation to the soldiers of the belligerent.

It remains no less evident that the exercise of the sovereignty of a neutral State permits it to prevent its *ressortissants* from taking service in the armed force of a belligerent; but it is not obliged to do so. The only thing that can be required of a neutral State is that it shall not make it easy for them in this respect by allowing on its territory the formation of corps of combatants or the opening of recruiting agencies. These cases are provided for by Article 2 of the French proposition relative to the rights and duties of neutrals on [200] land¹ which has been discussed in the preceding meeting. But outside of these limits the neutral State cannot be held to control the actions of its subjects, though it is able to claim from their enrollment whatever consequences it will by reason of its internal legislation, which in certain countries provides loss of nationality in such a case. The absolute duty incumbent on the neutral State lies in the observance of strict impartiality with respect to the belligerents.

An example taken from French law may perhaps be usefully cited in support of this argument: A French subject loses the character of a Frenchman only if he takes service in the ranks of a foreign army without authorization of the Government. It results from this that the French Government would fail in impartiality if it authorized the enlistments of its *ressortissants* in the army of one belligerent but not in that of the adversary because it would deter them in the second case by the fear of losing their nationality. Moreover, this impartiality must not be merely apparent, as would be the case even if the authorizations were accorded indiscriminately in regard to the two belligerents, for, by reason of the currents of sympathy which always manifest themselves

¹ Annex 24.

in favor of one of them, they could not be on the same footing, this solution having, besides, the serious disadvantage of making the *ressortissants* of a State liable to be fighting in the ranks of two enemy armies.

In addition to this duty of absolute impartiality and the prohibition of according its *ressortissants* any facilities for participating in hostilities, it does not seem that the neutral State can be obliged to exercise separately over the latter a constant surveillance, which could be, moreover, only illusory. And on the other hand one cannot deny that a belligerent is acting lawfully in accepting services for which he will assume the responsibility.

The President agrees with Mr. LOUIS RENAULT in stating that Articles 64 and 65 of the German proposition are connected with Article 2 of the French proposition, and he thinks the committee will have to examine them together. Consequently, he reads Article 65.

ARTICLE 65

Neutral Powers are bound to prohibit their *ressortissants* from engaging to perform military service in the armed force of either of the belligerent parties.

His Excellency Mr. van den Heuvel takes up again the observations of Mr. LOUIS RENAULT. He declares that the solutions proposed by the German delegation to the two questions now being discussed, as they are set forth in Articles 64 and 65, do not appear acceptable to the delegation of Belgium.

The first paragraph of Article 64 states two propositions, of which the first is perfectly just, but the second appears unacceptable. The first forbids belligerents to demand war services of neutral persons, it forbids them to exercise any compulsion against these persons with a view to obtaining combatant services. To this provision there can be no objection. But according to the terms of the second proposition, which are incidentally formulated in the same paragraph, belligerents may not accept these services of neutral persons even though they are freely and voluntarily offered by the latter. This is going too far; such a general and absolute prohibition arbitrarily limits the authority of the belligerent while at the same time infringing the right of individual liberty of the neutrals.

In the second place, Article 65 declares that neutral States are bound to prohibit their *ressortissants* from enlisting in the ranks of the belligerents. [201] What does this mean? Does it mean that they are to prevent their departure from the country or inflict punishment upon them, either civil, as the loss of nationality, or repressive, as fine or imprisonment? But the question of departure from the country has already been examined. The subcommission appeared to admit without objection the principle set forth in the second paragraph of Article 2 of the French proposition, according to which "the responsibility of a neutral State is not engaged by the fact of certain of its citizens crossing the frontier to offer their services to one of the belligerents," and as to the penalties for enlistment in the foreign country it would be neither just nor practical to prescribe them in an absolute manner. If it is a question of a few individuals their case can present no danger. If, on the contrary, the case arises of an attempted passage *en masse* across the frontier of the neutral State, the latter will consider the situation and will take freely, but in a uniform manner, all the measures which the circumstances seem to it to make necessary. These eventualities have already been examined in the course of the preceding meeting.

To sum up, the Belgian delegation does not believe that there is any occasion

for formally forbidding belligerents to accept the services of neutrals or for obliging neutral States to lay down absolute prohibitions on this subject with respect to their *ressortissants*. It feels that it is necessary, in principle, to maintain for each the liberty of acting according to the circumstances.

The President calls attention to the fact that Article 2 of the French proposition, to which his Excellency Mr. VAN DEN HEUVEL referred, has not yet been voted. He recalls that it will be submitted to the committee at the same time as Articles 64 and 65.

His Excellency Baron Marschall von Bieberstein recognizes that there are two sides to this question. The German proposition constitutes only an attempt to prevent the disputes which might arise from the fact of the presence of neutral subjects in the armies of the belligerents. I admit, he says, that it would not be possible for the neutral State to prevent its subjects, by Draconian methods, from enlisting in the service of such or such a belligerent. It is not a question, therefore, of imposing upon it the duty of examining into the aims of each person who crosses the frontier. But one might imagine the case where thousands of neutral *ressortissants* come to enlist voluntarily in the ranks of one of the belligerent armies. Even if the neutral Government should do nothing to encourage its subjects to commit such acts, the other belligerent would not fail to tell it very frankly its opinion on this subject and would claim the consequences of what it might regard as an infraction of the rules of neutrality.

Colonel Borel did not oppose Article 64 because if it is desired to succeed in excluding all services, even voluntary, on the part of neutral persons, the only means of doing so lies in an engagement on the part of the belligerents themselves, as is stipulated in Article 64.

Article 65, on the contrary, raises very just objections. It cannot stand if Article 64 is rejected; it appears absolutely superfluous if this article is maintained. Moreover, and this is its greatest fault, the measure it is intended to decree is entirely devoid of force. Even if the neutral State wished to prevent its *ressortissants* from serving in the ranks of one of the belligerents, how could it do so with respect to its *ressortissants* who live not in its own territory but in the territory of one or the other of the belligerent States? One cannot ask a State to decree an interdiction devoid of real sanction and whose non-observance would be prejudicial to its authority. At the most it could refrain from according its *ressortissants* positive authorization to enter the service of one or the other of the belligerents.

[202] His Excellency Lord Reay shares the opinion of Mr. LOUIS RENAULT and his Excellency Mr. VAN DEN HEUVEL. He wishes to recall the fact that the English law, by the terms of Article 4 of the Foreign Enlistment Act, forbids British subjects to accept or to consent to accept without permission of His Majesty, within his domains or outside of the same, any commission or engagement in the military or naval service of a foreign State which is at war with another foreign State at peace with His Majesty.

If a British subject or even a person not a British subject residing in the domains of His Majesty, induces another to accept such a commission or engagement, this act shall be considered as a crime and shall be punishable by fine and imprisonment, even penal servitude, if the court to which the case shall be submitted judges it necessary.

Although the interdiction demanded by the German proposition results from

the British law, his Excellency Lord REAY nevertheless considers that there is no need to formulate a conventional obligation in this respect. Such an interdiction can result from an act of sovereignty but not from stipulations within the domain of international law.

His Excellency Lieutenant General Jonkheer den Beer Poortugael observes that in the course of the present discussion the question has always been of neutral persons who take service in the ranks of one of the belligerent parties. It is necessary also to consider the case of those who are already in this service by reason of engagements made prior to the opening of hostilities. He calls the attention of the subcommission to the difficulties and even dangers which such cases might present for the neutral States.

His Excellency Mr. Keiroku Tsudzuki does not yet believe it his duty to express an opinion either for or against the theoretical logic of the German proposition. He desires only to formulate this consideration: the admission of *ressortissants* of a neutral State into the army of a belligerent is not a very desirable thing, since this admission might involve the introduction of elements little to be recommended in a regularly constituted army; and that, without reference to the question of the discipline and cohesion of the said army.

One cannot, however, consider the casual admission of neutrals into a regular army as contributing to the encouragement of humanitarian practices on the battlefields, and all the more so when one takes account of the fact that war often breaks out in less civilized regions than those we ordinarily see.

Brigadier General Davis asks permission to add a few words to the discussion for the information of the subcommission, and reads the following observations:

A law of the United States approved by the PRESIDENT in 1818—nearly eighty-nine years ago—contains the following penal provisions:

Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be deemed guilty of high misdemeanor, and shall be fined not more than one thousand dollars, and imprisoned not more than three years. (Section 5282, R. S.)

[203] That is to say, a national or a *ressortissant* of the United States who goes abroad with the intention of entering the military service of a belligerent or who persuades another to do so, becomes guilty of a crime for which he is liable to a fine of \$1,000 and imprisonment for three years.

This law has been put to the proof by practice in the United States for almost a century. It has been applied on many occasions and has constituted a strong support in the maintenance of the neutral position of the United States Government.

A law such as I have just submitted to the consideration of the Commission, and which has been favorably received by a people feeling keenly any restriction of individual liberty of movement or occupation, can very well receive your attention at this moment.

His Excellency Mr. Nelidow offers some remarks respecting Articles 64 and 65.

So far as concerns the first paragraph of Article 64, he believes that there can be only an apparent contradiction in its terms, providing for the interdiction of asking neutral persons to render war services, *even though voluntary*. The word "asking" is used in the sense of exacting, and it means here that if a war breaks out, a belligerent cannot force the neutrals who are already engaged in its service to take part in hostilities.

As to Article 65, he does not consider its wording contrary to the principles set forth by Mr. LOUIS RENAULT and Lord REAY relative to the rights and independence of neutral States, for the question is simply whether the latter have or have not laws to sanction the interdictions which they must cause to be respected by their subjects.

Mr. Pierre Hudicourt reads the following declaration:

The Republic of Haiti has the honor to declare that it cannot assume the obligation of preventing its citizens from enrolling under the flag of a belligerent, because individual liberty is guaranteed by its domestic legislation, and that the Government reserves the right to take whatever measures the circumstances would require in regard to its citizens who might take service in a foreign country without its consent.

His Excellency **Réchid Bey** desires to call the attention of the subcommission to the purpose of the Conference which is to diminish as much as possible the chances of war. From this point of view it would seem very desirable that the neutral States should be obliged to forbid their *ressortissants* to take part in hostilities.

Major General Baron **Giesl von Gieslingen** declares that the Austro-Hungarian delegation supports the principle of the German proposition.

So far as concerns the wording of the last sentence of Article 64, he desires merely to call attention to the fact that the Austro-Hungarian amendment tended only to broaden its meaning by indicating that if, for example, belligerents should find in a town a civil officer such as a burgomaster invested with public duties, it would be well to retain him.

The **President** announces that the question will be examined by the committee of examination.

His Excellency Mr. **Léon Bourgeois** considers that according to the explanations which his Excellency Baron MARSCHALL VON BIEBERSTEIN has been so good as to give to the subcommission on the subject of the German proposition there can be only an apparent contradiction between the two questions before us.

What concerns the German delegation is the fact that the subjects of a neutral State might cross its frontier *en masse* to go into the service of [204] one or the other of the belligerents. But does it think that such a supposition can be realized without the neutral State's being a party to this *levée en masse*? Just as individual passages are difficult and even impossible of control, so are passages *en masse* impracticable without a preliminary organization which would engage the responsibility of the neutral State. This is what Article 2 of the French proposition relative to the rights and duties of neutrals on land provided for in establishing a distinction between the two cases. As Mr. LOUIS RENAULT said, we consider that the neutral State may be required not to accord any facilities to a belligerent by allowing, for the benefit of the latter, the establishment of enlistment bureaus on its own territory or the operation of recruiting

agencies. The French proposition is in accord with the Belgian proposition on this point.

But there is one principle that we must not lose sight of,—that is that the right of neutrals is primordial. War, indeed, is the exception. Peace is the common right. It is therefore our special duty to make the neutrals' right of sovereignty prevail and to safeguard as far as possible their tranquillity and liberties, which the interest of the belligerents must not infringe, however worthy of consideration it may be.

The germ of the discussion lies in the fact that one can impose upon neutrals only "obligations not to act" but not "obligations to act," from which might arise the possibility of an exercise of constraint over them on the part of the belligerents.

If accord is well established on this principle the consequences will follow quite naturally: according to French law, for example, it will not be permitted to accord authorization to render services to one only of the belligerents to the exclusion of his adversary, just as the interdictions of the English law, cited by Lord REAY, cannot be raised in favor of one of them.

We believe we should maintain with respect to the neutrals only this negative obligation not to favor any of the belligerents and not to depart from a strict impartiality with regard to them. If we should go further we would risk being accused of infringing the sovereignty of the neutral States and of going against the purpose of the Conference, of which his Excellency RÉCHID BEY just now spoke, for in introducing into the texts we are preparing at this moment clauses difficult of observance we might prepare the way for disputes of interpretation in the future. The first delegate of Germany will certainly agree with us in recognizing that we must do everything to ward off this danger.

The **President** states that the subcommission has a week in which to find a satisfactory formula. Therefore, the vote is postponed to the next meeting.

The meeting adjourns at 12:30 o'clock.

SIXTH MEETING

AUGUST 2, 1907

His Excellency Mr. T. M. C. Asser presiding.

The meeting opens at 10:45 o'clock.

The **President** asks if anyone has any observations to make on the subject of the minutes of the preceding meeting, the first proof of which has been printed and distributed.

Major General von Gündell points out that a mistake has crept into the second paragraph of his explanations relative to Article 63 of the German proposition.¹ This makes him say the contrary of what he did say. He explained that in Article 63 the German delegation had had in view the case of *ressortissants* of a neutral State residing in the territory of belligerent A and furnishing supplies to the other belligerent B. They cannot be authorized to do so except in case the merchandise does not come from the territory of belligerent A. "*Neither can they subscribe to a loan issued by belligerent B.*"

The **President** announces that note will be taken of this observation in the second proof of the minutes of July 26, and he declares them adopted under this reservation.

His Excellency Count Tornielli: Mr. President, I request the floor not for the purpose of entering into the debate which is on the order of the day for this meeting, but to inform your Excellency that on the occasion of the examination, concluded yesterday, of the draft convention proposed by the British delegation on the rights and duties of neutral States in case of naval war it was recognized that the provision of the first article of the said project ought preferably to have been submitted to the study and deliberations of the subcommission over which you preside. The article is thus worded:

A neutral State is bound to take measures to preserve its neutrality only after it has received from one of the belligerents a notification of the commencement of the war.

The second subcommission of the Third Commission has decided to refer this article to the second subcommission of the Second Commission, which has on its program "The Opening of Hostilities."

[206] In mentioning this decision to your Excellency I ask you to be so good as to place on record the communication I have just had the honor to make.

The **President** records the communication of Count TORNIELLI and announces that Article 1 of the draft convention proposed by the British delegation on the rights and duties of neutral States in naval war,² shall be put at the end of the

¹ Annex 36; also *ante*, fifth meeting, p. 193 [198].

² Vol. iii, Third Commission, annex 44.

order of the day for the next meeting. He declares then that the discussion is opened on Chapter II of the German draft concerning "*services rendered by neutral persons*,"¹ and the amendments relative thereto. He recalls that in the preceding meeting the discussion had borne simultaneously on the two Articles 64 and 65.

His Excellency Lieutenant General Jonkheer den Beer Poortugael asks permission to make some observations on Article 64.

At first I believed, he says, like the delegation of Belgium, that in general this proposition was just in forbidding belligerents to require neutral persons, or rather the subjects of a neutral State, to render them war services.

I thought that the only purpose in view was to prohibit the belligerent parties from forcing these persons, if any might chance to be in the theater of war, to fight in their ranks or render them other services. Laying aside the practical difficulty for the belligerent of knowing whether he will have really to deal with a neutral person, the juridical reason for creating a privilege for neutrals who are for their own profit voluntarily established in an occupied country, and the contrast which seems to exist between the constraint and the consent expressed by the last two words of this paragraph, it seemed that the paragraph might be accepted without too much disadvantage.

But after the observation that I had made in the meeting of July 26 to the effect that in the course of the discussion the question has always been of neutral persons who take service in the ranks of one of the belligerent parties, but not of those who are already there, the honorable President of the Conference, Mr. NELDOW, gave to this paragraph the explicit interpretation that the word "asking" is used in the sense of exacting and that it means here that if a war breaks out a belligerent cannot force the neutrals who are already engaged in its service to take part in hostilities.

If that is truly the meaning of the German proposition it would be impossible for the delegation of the Netherlands to accept it.

First, it has not been able to find the "juridical ratio" for such a rule. How can it be or become right for an individual, free to do what he will, who voluntarily enlists in military service, to be able to get out of this service and even be forced not to perform it, just at the time this service becomes necessary to the State which engaged him. One takes soldiers in order that they may be available in time of war but not that in time of war they may leave the ranks and turn their backs on one. That would be illogical.

But there are, besides, practical reasons which prevent our accepting the proposition. Our army is one composed of militia and a nucleus of non-commissioned officers who are all nationals, but we have in addition a small corps, a reserve of our colonial army. This reserve, like our whole colonial army, is composed of volunteer enlisted soldiers, of which some are natives, an important part our compatriots, and some foreigners, as one finds in nearly all the armies of States which have colonies. These are intrepid men loving [207] dangers like the mountain climbers, and as we often have expeditions to make they find them; furthermore they seek to make a career, as many have done. Well! Why force the State to do without services for which it has such need and restrain these persons from accomplishing a service which they love and have contracted for?

We cannot admit that the soldiers whom we feed, instruct and pay in order

¹ Annex 36.

to have them at the moment of danger may go away on the day we might need them and before their contract has expired.

The delegation of the Netherlands therefore has the honor to propose the addition after the first paragraph of another, thus worded:

Not to be included under this rule are: *ressortissants* of a neutral State who, at the time of the outbreak of war, are found in the ranks of the army of a belligerent under the terms of a voluntary enlistment.¹

And the delegation declares that if this method or another should not sufficiently remedy the objections pointed out, it could not, to its regret, adhere to the said proposition.

His Excellency Baron **Marschall von Bieberstein** recognizes that the expression "*war services even though voluntary*," has given rise to some objections. The fact that these words could raise them indicates that they are not sufficiently clear or precise. Under these conditions the German delegation believes it should withdraw them, and asks the subcommission to consider as the German proposition the text of Article 64 without the words "*even though voluntary*." The first paragraph will then have to read as follows: "*Belligerent parties shall not ask neutral persons to render them war services*."

His Excellency Mr. **Hagerup** agrees with General **DEN BEER POORTUGAEL** but hesitates to adhere to the amendment proposed by him. Norway, indeed, like many other States where military service is compulsory, calls to the colors not only the nationals properly so-called, that is to say those who are *ressortissants* by birth or by act of naturalization, but also all those who are domiciled in the territory; in such case the latter do not profit by any exemption nor is the State obliged to take account of their nationality by investigating whether they are also *ressortissants* of another country. When war breaks out a country in which the army is thus organized cannot deprive itself of the services of all those who are not its nationals.

His Excellency **Réchid Bey** declares that the delegation of Turkey supports the amendment proposed by General **DEN BEER POORTUGAEL** but believes it would be better to specify that it is a question of "*previous voluntary enlistments*," by adding the word "*previous*."

The **President** remarks that it is difficult to decide on the wording of this amendment, which has only just now been brought to the attention of the subcommission, before it has been printed and distributed. He consequently proposes to refer it to the committee and to continue the general discussion

His Excellency Mr. **Hagerup** adds a few words to his preceding observations in order to state very precisely the question to which they refer. He asks if the German delegation in its Article 64 intended to refer to the case in which the legislation of a State permits it to exact military service of foreign *ressortissants* domiciled in its territory, and if it considers that this State should disband this class of soldiers the moment their services should become war services.

Major General **von Gündell** replies that if he has fully understood the explanations of his Excellency Mr. **HAGERUP** there exists a Norwegian law which imposes the obligation of military service upon neutral subjects domiciled in Norway.

¹ Annex 42.

[208] It is indeed such a case that the German proposition had reference to in Article 64, for its very object is to stipulate in the world convention which is now being elaborated, that it is formally forbidden to require *ressortissants* of neutral States to render war services even when they are domiciled on the territory of one of the belligerent parties.

His Excellency Count **Tornielli** declares that the Italian delegation congratulates the German delegation upon having introduced into international law the new conception of a special status for neutrals. But it thinks that the suppression of Article 65, demanded by the Swiss delegation, also finds its foundation in the differences existing in the civil laws in the matter of nationality. As long as there are persons who are subject to the duties of a double nationality, that of the country of origin and that of the country where they reside, the question of the penal sanction necessary to render the application of Article 65 effective will present almost inextricable difficulties.

Colonel **Borel** asks permission to submit a question to his Excellency Mr. **Hagerup** regarding the case to which he has just referred. It is the custom to stipulate in international treaties of establishment that foreigners domiciled in the territory of a State cannot be forced by it to any military service either in time of war or in time of peace. Do stipulations of this kind exist in the treaties of establishment now in force between Norway and other countries?

His Excellency Mr. **Hagerup** replies that Norway has no such treaties. Moreover, according to Norwegian law, those who are domiciled *animo commorandi* in the country are not foreigners in the sense indicated by Colonel **Borel**.

But so far as the observations of his Excellency Count **Tornielli** are concerned, he wonders if it is not necessary to consider the case in which a person domiciled in the territory of a belligerent State has a double nationality and can be considered as a neutral or not, according as it is decided from the point of view of domicile or from the point of view of original nationality. He remarks, moreover, that these observations do not apply to Norway alone but to many other countries which are in a similar situation.

His Excellency Mr. **Carlin** remarks that although he does not know the special provisions which may exist in Norway on this subject, it seems to him that according to the general principles of law the question raised by Mr. **Hagerup** cannot exist for persons who do not possess the citizenship of the State on whose territory they are domiciled. They cannot be forced to do military service in this State. In return, when it is a question of persons having a double nationality, that is to say, who are at the same time *ressortissants* of the country where they are domiciled and of another country, the State in which they are domiciled will call them to military service just as though they possessed exclusively the nationality of this State. The other nationality does not enter into the question in any way.

Mr. **Louis Renault** believes it necessary to determine the question by establishing a distinction between the two cases just referred to, which are absolutely different.

The discussion has related first of all to the question of domicile for neutral persons residing in the territory of a belligerent. The case has then been discussed of persons who can be considered as having a double nationality.

As regards the domicile of *ressortissants* of a neutral State who reside in the territory of one of the belligerent parties, the French delegation maintains [209] the point of view which has already been expressed in the general discussion and according to which it objects to any premium on neutrality. However, it does not intend by any means to press this principle to its utmost consequences, especially with regard to military services; for it considers that a country may exact such service only of its nationals, that is to say, those who have a bond of allegiance with it, and that foreigners even though domiciled in its territory may not be forced to render it.

As to cases of double nationality, they can occur only when a person is found to have a different nationality according to the law of the country in which he resides and that of his country of origin. This would be the case particularly according to our legislation when a Frenchman, bound to military service in the active army, would become naturalized without having obtained the authorization of his Government, this naturalization remaining in such case without effect in the country of origin.

We do not have to concern ourselves with this very special class of *ressortissants*: they are considered as nationals by the State on whose territory they reside and clearly stand the consequences of the unfavorable situation created by their act.

But it is not necessary to confuse the two cases, for the most general one is that of neutral persons having only one nationality who are domiciled on the territory of one of the belligerents. They are subject to the common law, according to which they do not owe military service to a State with which they have no bond of allegiance.

It is thus that our treaty of establishment with Switzerland is worded, the clauses of which provide exceptions to this general rule only for police service which may be required of foreigners in time of peace.

The President thanks Mr. LOUIS RENAULT for his explanations.

His Excellency Baron **Marschall von Bieberstein** desires to offer an explanation regarding Article 65 which has led to the observations of his Excellency Count TORNIELLI. He thinks that it will not suffice to strike it out, as the latter has proposed, for he considers it useful to specify the duties which are incumbent on the neutral Powers with respect to their *ressortissants*. But he very willingly supports the point of view expressed by his Excellency Mr. LÉON BOURGEOIS in the course of the preceding meeting which distinguishes for the neutral States the "*obligatio ad faciendum*" and the "*obligatio ad non tolerandum*."

If the German delegation does not at this time withdraw Article 65 as it appears in its proposition, it is because it has not had time to find another formula, and it believes that this text can serve as a basis for the work of the committee of examination.

His Excellency Major General Baron **Giesl von Gieslingen** does homage to the spirit which inspired the wording of Articles 64 and 65, and entirely approves the explanations furnished on this subject by General VON GÜNDELL. He considers that there only remains a question of wording to be settled.

As no one asks for an immediate vote, the President announces that Articles 64 and 65 will be referred to the committee.

The order of the day calls for the discussion of Article 66 and the Swiss amendment relative thereto:

ARTICLE 66

SWISS AMENDMENT:¹

Neutral persons moreover shall not be required, against their will, to [210] lend services, not considered war services, to the armed force of either of the belligerent parties.

It will be permitted, nevertheless, to require of them sanitary services or sanitary police services, not connected with actual hostilities. Such services shall be paid for in cash, so far as it is possible to do so. If cash is not paid, requisition receipts shall be given.

Rewrite the second paragraph of Article 66 as follows:

It will be permitted nevertheless to require of them sanitary services or sanitary police services not connected with actual hostilities if imperatively demanded by the circumstances. Such services shall be paid for in cash so far as possible. If cash is not paid, requisition receipts shall be given.

Colonel Borel explains the reasons in support of the amendment presented by the Swiss delegation, an amendment which is not in contradiction with the German project and which on the contrary only specifies a consequence of the very principle laid down by this project.

In its first paragraph Article 66 forbids belligerents to require services of neutral persons against the will of the latter. The second paragraph of the same article authorizes an exception to this interdiction in case of sanitary services or sanitary police services to be rendered to a belligerent.

Now, sanitary services or sanitary police services are in themselves very extended and last without interruption during the whole of the war. The assistance of neutral persons on the contrary can be required only temporarily because urgent circumstances demand it and only for the continuance of these circumstances. This restriction, which is justified in itself, is quite in the spirit of the German project, but it is useful to state it in express terms in the text of the article proposed and this is precisely what the Swiss amendment tends to do.

Major General von Gündell supports the amendment proposed by the Swiss delegation. He considers as going without saying that no requisitions shall ever be demanded except in case of absolute necessity, for it cannot enter the mind of any military commander to require such services when they are not urgently commanded by circumstances.

Upon the question of Mr. LOUIS RENAULT as to whether the requisitions provided for by Article 66 relate equally to the territory of the belligerent and to invaded territory, the General replies that the German project was intended to have reference to both cases.

The President announces that the committee will take this observation into consideration.

He proposes then to take up Chapter III relative to the property of neutral persons, and reads Article 67 thus worded:

ARTICLE 67

No war tax shall be levied on neutral persons. A war tax is deemed to be any requisition levied expressly for a war purpose.

Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.

¹ Annex 38

Mr. **Louis Renault** thinks it useful to recall, apropos of this article, the general observations that he has already made with a view to opposing any distinction in such a matter between the neutral persons and the subjects of the belligerents.

[211] The stipulations of Article 67, providing that no war tax shall be levied on neutral persons, tend to restrict the sovereignty of the belligerent on whose territory they reside. The tolls, imposts and taxes which the belligerent State levies must, indeed, be applied in the same manner to all those who are on its territory. They must all without distinction bear the same charges by virtue of an existing condition.

If it is a question, on the other hand, of taxes levied on the inhabitants of a country by the invader, the latter acts by virtue of a *de facto* sovereignty recognized by the provisions of the 1899 Regulations which treat of military authority over the territory of the hostile State (Section III, Articles 42 to 57).¹

The provisions of Chapter III of the German proposition give rise to another fundamental objection, namely, that if it is admitted that they regulate only the charges that can be levied on neutrals and concern exclusively the property of neutral persons, it may be concluded *a contrario* that the invader will not be governed by their restrictions so far as concerns the subjects of the hostile party. It being granted that these provisions are sensibly analogous to those adopted in 1899, it would result that a situation which was provided by the First Peace Conference for the subjects of belligerents would to-day be aggravated; those rules were equitable in that they set aside the nationality of the inhabitants. Why modify them in a sense which would be contrary to both the spirit and text of the provisions admitted in 1899?

The **President** reads Articles 48 and 49 of the 1899 Regulations:

ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

His Excellency **Baron Marschall von Bieberstein** answers Mr. **LOUIS RENAULT**. He waives the first part of the argument relative to what the latter terms the privileges of neutrals. But so far as concerns the objections which Mr. **LOUIS RENAULT** makes to Article 67, in alleging that the *ressortissants* of a belligerent in a territory invaded by the adverse party would be in a worse situation than that in which they are placed by the Regulations of 1899, he does not believe that there is any antinomy between Articles 48 and 49 of these Regulations and the new Article 67 proposed by the German delegation.

The question as to whether a belligerent can lay war taxes on neutral persons domiciled in territory occupied by it is not treated of in Articles 48 and 49. The purpose of the German proposition is to remedy this omission.

¹ Annex 1.

Mr. Louis Renault admits that it is true that the Regulations of 1899 do not deal with taxes levied by a belligerent on its own territory. In this regard the provisions of the German proposition constitute a new law and may have their use if we are not stopped by the general objection previously indicated.

But so far as concerns occupied or invaded territories, he regrets that he is unable to share the opinion of his Excellency Baron MARSCHALL VON BIEBERSTEIN for he still believes that no exception should be made with respect to neutral persons. The very terms of the old Articles 48 and 49 show that no distinction is to be made between the neutrals and the nationals of the belligerent whose territory is occupied. These articles were conceived *in abstracto* and appear sufficient.

His Excellency Baron Marschall von Bieberstein remarks that if the text admitted in 1899 can be interpreted as meaning that a belligerent in enemy country can levy taxes on neutrals domiciled there, it will be proved that the new Article 67 proposed by the German delegation was necessary since that is precisely what it wishes to prevent.

His Excellency Mr. Léon Bourgeois believes that the discussion can be summed up in two words: the point is whether the war taxes can be levied *ratione loci* or *ratione personae*.

In the opinion of the French delegation the first hypothesis should alone prevail. Two cases only can be considered, according as it is a question of the territory of one of the belligerents or of a territory invaded by the hostile party. In the first case the taxes levied by a belligerent on its own territory by virtue of its sovereign authority are not, properly speaking, war taxes, but loans or special imposts particularly heavy because the needs of the Government are greater. Neutral persons domiciled in the territory submit purely and simply to the fate of all the citizens, for in the emergency it is not a question of violent acts but of acts of necessity.

In the second case, if a belligerent levies taxes in the territory of the hostile party occupied by it how can it distinguish between the inhabitants of this territory as to whether they are neutral subjects or *ressortissants* of the enemy? That is why the French delegation thinks these taxes should be levied *ratione loci*. If it were otherwise it seems impossible to foresee how the distinction *ratione personae* could be established and upon whom this duty would rest. Here is a town upon which a war tax is levied; is it the belligerent or the local authority who will have to investigate the nationality of the inhabitants? If it is the latter who is charged with this duty it is obvious that it will not make a distinction between its nationals and foreigners to the profit of the latter. If it is the belligerent who proceeds to these investigations, on what basis will it establish the distinction?

It seems therefore that the question comes back to this, that the neutral must be assimilated to the *ressortissants* of the belligerent on the territory of the latter and to the subjects of the adverse party in occupied territory. This double assimilation gives the neutrals all the guaranties that can be accorded them.

His Excellency Lord Reay declares that the British delegation supports entirely the point of view of his Excellency Mr. LÉON BOURGEOIS.

His Excellency Baron Marschall von Bieberstein states that two principles are presented. The first, supported by the French and English delegations, is

that a neutral domiciled in the territory of a foreign State must submit to the fate of the *ressortissants* of that State.

The principle advocated by the German delegation on the contrary is that the neutral must always, and even in this case, be treated in conformity with the situation of the State of which he is the subject.

[213] The President considers that the question has been very well stated in the course of this useful and interesting discussion. He believes that it only remains to be referred to the committee of examination.

As no one objects it is thus decided.

The President reads Article 68 and the Swiss amendment¹ relative thereto:

ARTICLE 68

Neutral property shall not be destroyed, damaged or impaired unless necessary by reason of the exigencies of war. In this case, the belligerent party is only obliged to pay an indemnity in its own country or in the enemy country, when the *ressortissants* of another neutral country or its own nationals likewise enjoy indemnification and reciprocity is guaranteed.

ARTICLE 68

Property of a neutral person shall not be destroyed, damaged or impaired unless necessary by reason of the exigencies of war. In such a case the belligerent party is held to complete indemnification of the owner.

Colonel Borel takes the floor to explain the reasons which militate in favor of the amendment presented by the delegation of Switzerland. The principle of indemnity which this amendment lays down is already implicitly admitted by the German project; but this project leaves to the States the care of realizing it at their will and, consequently, it is obliged to make the right to indemnity depend in each particular case on a condition of reciprocity and equality which risks rendering this right very often illusory. Would it not be better for the States to engage by a formal stipulation to accord everyone the indemnity referred to in the project? In acting thus they would be not only inspired with a just and generous sentiment quite in conformity with the humanitarian purposes directing the labors of the Conference; they would also render useless the reservations formulated by the German project and prevent the difficulties to which they would not fail to give rise. Indeed, the proposed amendment can have a very important pecuniary bearing; but the delegation of Switzerland would be happy if it were possible to rise above this consideration and welcome favorably the idea which it has made a point of submitting to the examination of the Commission.

His Excellency Mr. Milovan Milovanovitch thinks that the principle of the privileged position of neutrals is even more accentuated in Article 68 than in the others; the decision that will be made must therefore react on all the articles. It is evident that if Article 67 has been referred to the committee of examination it is necessary to do likewise with Article 68.

Lieutenant Colonel van Oordt observes that in Article 23 of the 1899 Regulations respecting the laws and customs of war on land the limits to the destruction and seizure of enemy property have been more closely determined than those regarding neutral property in the German and Swiss propositions. Article 23 authorizes the seizure or destruction of enemy property only in case it should be imperatively demanded by the necessities of the war.

¹ Annex 38.

The **President** recalls that he has already said that the committee of examination would have to establish the necessary harmony between the texts of the present propositions and the Regulations of 1899.

[214] Major General **von Gündell** admits that it would be desirable to extend the humanitarian idea as far as the Swiss amendment and the German delegation would be the first to wish it. But is it not going too far?

It appears to him impossible that all damage suffered by the neutrals should be indemnified. Setting aside the pecuniary question, he calls attention to the case in which it would be impossible to state upon whom the duty of indemnity should fall. For example: a town is bombarded and captured by party *a*; party *b* having retired endeavors to retake the village and bombards it in his turn. Which of the two adversaries shall be bound to indemnify the damage caused? Cases of this kind may multiply without there being any possibility of establishing the responsibility.

The **President** observes that this argument might well be advanced against the German proposition itself which merely makes the principle of indemnity contingent upon that of reciprocity.

Major General **von Gündell** replies that the German proposition provides exceptions to the principle of indemnification. A neutral is not justified in claiming any indemnity whatever when the nationals themselves are excluded from this advantage.

They pass to Article 69 thus worded:

ARTICLE 69

The belligerent parties shall make compensation for the use of neutral real property, in the enemy country, the same as in their own country, provided that reciprocity is guaranteed in the neutral State. In no case, however, shall this indemnity exceed that provided by the legislation of the enemy country in case of war.

His Excellency Mr. **Keiroku Tsudzuki** joins in the Serbian proposal to refer Articles 68 *et seq.* to the committee of examination because he finds it difficult to form an opinion so long as one of the two principles in discussion has not been decided on.

The **President** consequently refers these articles to the committee of examination and passes to Article 70 thus worded:

ARTICLE 70

Belligerent parties are authorized to expropriate or use for any military purpose, through immediate payment therefor in specie, all neutral movable property found in their country.

They may do the same in enemy country, within the limits and under the conditions specified in Article 52.

His Excellency Mr. **Eyschen** sets forth the following considerations in support of the Luxemburg amendments to Article 70.¹

Luxemburg takes the liberty of calling the attention of the Conference to a special point of view with respect to the question of neutrals, which primarily interests this country on account of its peculiar economic and geographic situation. Its metallurgical industry necessitates the employment of considerable

¹ Annexes 39 and 40.

railway material. As the Grand Duchy is located between France, Germany and Belgium, the greatest part of the rolling stock is on the lines of the neighboring States. But the situation is similar for the States which have commercial ports serving a hinterland belonging to neighboring States, as, for example, Belgium and the Netherlands; and the large States having very developed frontiers will in certain places in case of neutrality be in a situation similar to that of Luxemburg.

[215] Article 70 of the German proposition permits in general the military authority of the belligerent to requisition, that is expropriate, subject to indemnity, all movable property of the neutrals found on the territory of the belligerent.

Luxemburg proposes to make an exception to this rule in favor of public transportation material found on railways and waterways and belonging to neutral States or their grantees. It goes without saying that this material must be rendered easily recognizable by distinctive signs.

This proposal is based on the following grounds. Requisition is the expropriation of a thing belonging to a private person who is obliged to make this sacrifice in the general interest of the State. In case of the requisition of public transportation material belonging to a neutral State or its grantees it is no longer a private person who is affected. The question is in that case between two sovereign States both having the same rights and both defending general interests deserving of equal respect. One of these States is neutral: the duty of impartiality with respect to the two belligerents is imposed upon it. It could not, without failing in its obligations, grant a part of its transportation material to one of the States at war to be used by it as war material. The neutral State should consequently refuse all such requisitions. It is therefore a duty of neutrals which Luxemburg is fulfilling at this time and which it would like to see facilitated and guaranteed for the future. In 1870 Germany had used rolling stock of the railway belonging to Switzerland which was located in Alsace. As the result of a protest addressed by France to Switzerland this material was restored to its country of origin. Should Article 70 remain as it stands in its generality multiple abuses are possible and frequent and unjustified suspicions will scarcely be avoidable. If the large States which have for the moment declared themselves neutral, and it is desirable that their number shall continue always to increase, allow it to be done, their railway material will be little by little drained toward the theater of war and their armament will be weakened thereby.

A second difference between ordinary expropriation and requisition of material owned by a neutral State is that in the latter case the article requisitioned is intended for the public service; whether the requisition is made through grantees or the State itself such action affects the general interest of the entire political community.

Transportation facilities organized by the State, whether by concession or not, contribute to the welfare of the entire political community, and partake, therefore, of the nature of a public service. Each of the States, the one in making war, the other in safeguarding its peaceful interests, is acting for the welfare of its State and is exercising its sovereignty for the good of its population. Public transportation material is common property of the people, intended for the use of all and for the general prosperity.

The interests of the belligerent conflict with those of the peaceful neutral.

We do not see why the interests of one should yield to the interests of the other.

Finally, a third and very considerable difference lies in the fact that the injury done to a private individual can be repaired by a just indemnity; whereas the evil produced by confiscation of public transportation material is incalculable and irreparable.

Railways and waterways constitute a vascular system which carries the life-giving blood throughout the entire body. They are the economic tools of the people, the sources of power and the instruments of work belonging alike to industry, commerce and labor. The economic life of a neutral State may be gravely menaced by the sudden withdrawal of transportation material. Production will be lessened, will be arrested entirely, labor will be at a standstill, many fortunes will be compromised, many existences menaced or destroyed. How may all these evils be corrected? They do not appear to be absolutely [216] necessary and unavoidable since the quantity of material required may be foreseen and accumulated in time. Jurists and economists will be of one accord in accepting the amendment. It rests with statesmen to make the decision.

If the material belonging to neutrals remains at the disposal of these States, it can serve the economic interests of the belligerent States, especially in the frontier zones, where it will partially replace material requisitioned for the uses of war. It will reduce the penury of material in industrial and commercial countries and diminish there the disastrous effects of the war.

The adoption of the amendment will be objected to on the grounds that the necessities of war are opposed to it, that at certain times the commander of a military force should not be hampered by any consideration of this kind. The principle of right proceeding from necessity can be accepted. In presence of menace to the native land it is legitimate that the other considerations should efface themselves. This is still another application of the rule that private interests must yield before the general interest. But, in this connection it is ordinarily a question of fact. If the amendment is accepted, there will be sufficient transportation material. Nowadays all industrial concerns increase their general expenses in order to fulfill their duties towards the public. In so high an interest of justice and international peace, why should not the budget of war be treated in a similar way? For belligerents it is a question simply of the general expenses of their industry of war.

In case the proposed amendment is finally rejected the Luxemburg delegation deems that it should take the liberty of presenting subsidiary proposals.

In actual practice the most dangerous moment for transportation material of neutral States is indeed the time of mobilization at the opening of hostilities. In maritime warfare commercial ships belonging to the enemy's country which happen to be in the ports of the belligerents at the time war is declared, are accorded certain days of grace for unloading and leaving port. In 1870 France accorded thirty days, Germany, six weeks, to ships belonging to the enemy's merchant marine. The question of principle is pending before another subcommission. It follows that the granting of similar days of grace in order to permit public transportation material belonging to a neutral State to be returned to its country of origin would appear to be absolutely legitimate. Occasionally in certain localities practical difficulties in the way of returning such material may arise, but as a

rule, in view of the great extent of certain frontiers and the diversity of railroads and rivers, a clause so legitimate in principle will render genuine service.

In any event the right of requisition as regards the neutral State must be reduced to the minimum, and must be permitted only in case of imperative and absolute necessity. The duration of utilization may not exceed urgent military needs, and the material shall be returned with the briefest delay to its country of origin. This last point has already been adopted in 1899, upon a proposal from Belgium and Luxemburg. A decree of expropriation can be issued only under ministerial responsibility. In time of war the powers of the minister are delegated to a multitude of agents, belonging, it may happen, to a rather low degree of hierarchy. The inspiration of the moment is acted upon quickly. Therefore, special guaranties created by the Conference are needed. In the interest of the small States whose defensive action, frequently belated, is not sufficiently powerful to protect efficaciously the interests of their inhabitants, prescriptions emanating from the Conference are necessary.

For this reason, it is proper to state expressly that, whenever public transportation material owned by a neutral State or its grantees is retained by a belligerent State, the material of the latter, which happens to be within the neutral territory, likewise may be retained there until due compensation is made. It will be a forced mutual loan in the endeavor to reestablish the broken equilibrium.

[217] Not only is this provision equitable from every point of view but it is moreover legitimate and legally justified. The belligerent invokes *force majeure* and reasons of State, which compel him to act as he does in protection of his most precious interests. Would not the neutral State, whose industry, commerce and labor are gravely menaced, have the right to defend similar and equally serious interests by the same means? Has it not also occasion to invoke *force majeure* and State reasons? Is it not in a position of legitimate defense, and, therefore, entitled to make use of this right of retention until duly compensated? Does not such a measure incur the risk of being considered an unfriendly action? Here again the great States will succeed more readily in obtaining justice. It is in the interest of the small and the feeble that the provision should be sanctioned.

It should not be forgotten that the Luxemburg amendments do not contemplate commercial speculation upon the occurrence of war, but conservation and protection of relations already in existence. It is a question merely of safeguarding positions acquired in time of peace. This interweaving of economic interests across frontiers, this interdependence of the commerce, industry and labor of the various nations, is the most secure guaranty of the spirit of peace among nations.

Therefore, the maintenance of international relations is worthy of very special protection. Is there not occasion to say so expressly?

We are glad to accept the French and German proposals, which will greatly ameliorate the situation of neutrals. However, there will always be deficiencies in the declaration and detailed regulation of their rights and duties. The difficulties caused by the conflict of interests which actually arise within the theater of war as well as around it, can be settled by military and civil agents only by means of a detached and impartial spirit, respect for the rights of others, and a keen sense of the solidarity of interests which binds together all nations, and which inspires the acts of the Conference. In time of war the numerous agents of the belligerent State see their powers increasing in a manner at times startling.

Ordinarily it is impossible, before taking action, to refer to the Government, which in those troublous times is difficult of access, and whose prudence, calmness and experience are not then available for the protection of very considerable interests.

· Accordingly would it not be proper to condense into a few lines the principles which must guide the agents of the central power; and proclaim, for example, that the maintenance of commercial and industrial relations is placed under the protection and particular safeguard of the civil and military authorities?

By means of such a recommendation inscribed in the military catechism the rights of others, so worthy of respect, would be emphasized in the minds of those whom a legitimate ardor might otherwise threaten to carry beyond proper bounds. The civil functionary would see therein a precise statement of his authority, whereby he would at times be glad to be able to shape his course. In such a text private individuals would discover a safeguard to be invoked at a moment of insecurity.

By codifying the laws of warfare the Conference has already imposed its will on fields of battle. But around the theater of war, many peaceful and eminently respectable interests are sacrificed to it. Certain of these interests threatened by it can be effectually protected. By strengthening the rights of neutrals, the Conference will succeed in restricting in the economic field and in circumscribing more narrowly the closed lists of combat. This will be one more of the most efficient means of diminishing the evils of war, and of accomplishing the mission with which the high confidence of the nations has honored us
(*Repeated applause.*)

[218] The **President** recalls that the speaker who has just addressed them is the one upon whose motion the 1899 Conference expressed the *vœu* that the rights and duties of neutrals be the object of an agreement between the Powers. He proposes Mr. BUSTAMANTE as a member of the committee of examination, whose reporters will be Mr. LOUIS RENAULT for the question of the opening of hostilities and Colonel BOREL for that of neutrality.

The meeting adjourns at 12:30 o'clock.

SEVENTH MEETING

AUGUST 9, 1907

His Excellency Mr. T. M. C. Asser presiding.

The meeting opens at 10:45 o'clock.

The minutes of the preceding meeting are approved without remark.

The President reads the following letter from his Excellency Mr. A. BEERNAERT which he proposes to have printed and inserted in the minutes. It is so ordered:

THE HAGUE, *August 6, 1907.*

MY DEAR COLLEAGUE:

Among the proposed amendments to the laws and customs of war on land you will have noted the addition which the Japanese delegation wished to make to Article 57, composed of two paragraphs, 57*a* and 57*b*.¹

Upon my motion the first subcommission referred the examination of these amendments to the second subcommission, requesting that it examine:

1st, whether there might not be occasion to introduce them into the "Rights and duties of neutrals";

2d, likewise to transfer thereto Articles 58, 59 and 60 which at present compose Section IV.

You are aware that the 1899 Convention respecting the laws and customs of war on land is limited to the engagement undertaken by the contracting Powers to give to their armed land forces instructions in conformity with the Regulations annexed thereto. But if such an engagement is understood with respect to the first three sections of the Regulations the same cannot be said of the fourth which refers only to neutral States. These are duties with regard to which the States at war could give no instructions to their armed forces.

In 1899, you have not forgotten, the Conference was petitioned to draw up regulations respecting the rights and duties of neutrals, but this work, owing to insufficient preparation, had to be referred to a subsequent assembly.

However, accord having been established on the provisions of Articles 57 to 60, they were, for lack of better, inscribed in the Regulations.

[220] To-day when the neutrals are about to obtain complete and special regulations it appears that there should be included therein the provisions in question and eventually the amendments proposed.

In connection with this subject I also call your attention and that of the second subcommission to the amendment presented by Denmark,² which also touches, from certain points of view, upon the question of the rights and duties of neutrals.

Be pleased to accept, etc.

(Signed) A. BEERNAERT.

¹ Annexes 10 and 32.

² Annex 12.

The President proposes to take up this question when the labors of the Commission are completed.¹

The President announces that he has received a letter from his Excellency Mr. BRUN containing a proposition the purport of which has not yet been communicated. It concerns a matter which had already been referred to the committee of examination of the first subcommission and which, by its form, relates to the opening of hostilities, but which, in fact, enters rather within the scope of our labors.

This letter is worded as follows:

THE HAGUE, *August 5, 1907.*

MR. PRESIDENT:

In the last meeting of the second subcommission of the Second Commission his Excellency Count TORNIELLI announced that the second subcommission of the Third Commission had referred Article 1 of the British proposition entitled "Draft convention respecting the rights and duties of neutral States in naval war,"² to the subcommission presided over by your Excellency.

The said article is thus worded:

A neutral State is bound to take measures to preserve its neutrality only after it has received from one of the belligerents a notification of the commencement of the war.

To this article the delegation of Denmark proposes to add:³

But if it mobilizes its military forces before receiving this notice, in order to prepare in due time for the defense of its neutrality, this act shall not be considered as an unfriendly act towards either of the parties in dispute.

I have the honor to beg that your Excellency will be so extremely obliging as to have this amendment⁴ submitted to the subcommission at the same time as the British proposition cited above.

Be pleased, etc.

(Signed) C. BRUN.

His Excellency Mr. Carlin observes, in connection with the subject referred to in the letter of his Excellency Mr. BEERNAERT, that in the last meeting of the first subcommission the Swiss delegation had raised the question as to whether the stipulations of Article 53 of the 1899 Regulations respecting the laws and customs of war on land applied equally to the property of neutrals domiciled in the territory of belligerents. The first subcommission had referred this question to the examination of its committee of examination. This committee met yesterday and decided to refer the solution of the question to the committee of the second subcommission.

[221] Under these circumstances his Excellency Mr. CARLIN has the honor to propose that the second subcommission be so kind as to consent that this decision be acted upon.

The President asks if the Swiss delegation has formulated an amendment.

His Excellency Mr. Carlin replies in the negative. He desires only to know whether the provisions of Article 53 apply equally to the property of neutrals domiciled in the territory of the belligerents. He moves that the sub-

¹Annex 32.

²Post, Third Commission, annex 44.

³Post, Second Commission, annex 31.

⁴Ibid.

commission sanction the decision made yesterday by the committee of examination of the first subcommission, to the effect that the discussion of this question be transferred to the committee of examination of the second subcommission, which is adopted.

The President announces the continuation of the discussion on the first and subsidiary amendments presented by the Luxemburg delegation¹ to the proposition of the German delegation.²

Major General von Gündell makes the following address:

At the last meeting we listened with the greatest interest to the very eloquent and impressive discourse of the honorable first delegate of Luxemburg, his Excellency Mr. EYSCHEN, on the question concerning the transportation facilities coming from neutral States. As the Luxemburg amendment has reference to Article 70 of the German proposition, I take the liberty of replying in a few words. First of all, I state with satisfaction that the spirit which inspired the first delegate of Luxemburg in defending the inviolability of neutral transportation facilities is precisely the same that dictated the proposition of the German delegation, namely, the desire to contribute in all possible measure to lessening the evils of war which are inevitable with respect to neutral States and persons. At the same time the difficulty of satisfying this desire, common to us all, consists in that it is indispensable to subordinate to military necessity the interests of those who are strangers to the war. In so far as these necessities will permit we shall always be found ready to take into consideration the demands of equity and justice not only as regards neutrals but also as regards all private individuals.

The question as to whether neutral railway material may be requisitioned by belligerents has already been discussed by the First Conference of 1899. The result of these debates was Article 54 of the Regulations respecting the laws and customs of war on land, which stipulates: "The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible." It was at the First Conference that the honorable first delegate of Belgium, his Excellency Mr. BEERNAERT, had suggested ordering "immediate restitution of this material with a prohibition of using it for the needs of the war." But this addition not having received the assent of the Conference, it was limited to the clause "shall be sent back to them as soon as possible." I believe I have the right to conclude from this that the 1899 Conference wished to express the opinion that there may be some cases of *force majeure* in which a military commander cannot forego the right to employ all the transportation material he finds at hand without making any distinction of ownership. Permit me to advance one example among many: When there is a question of evacuating sick and wounded and there is on hand transportation material part of which belongs to a neutral State, would it not be contrary to the true spirit of humanity which presides over the peace conferences to refuse to utilize this material for the transportation of the wounded? It

would be easy to multiply these examples, and because on the theater of [222] war at any moment the case may arise in which it is indispensable to utilize all the transportation material at hand, either for a humanitarian purpose or for a purely military one, it therefore follows that this material cannot be exempted in principle from the right of requisition on the part of the belligerents.

¹ Annexes 39 and 40.

² Annex 36.

And so, while recognizing the arguments drawn in the interests of neutral States and individuals which his Excellency Mr. EYSCHEN has advanced in support of absolute inviolability of neutral transportation material, I venture to think that my military comrades and all those who have a true and clear conception of the exceptional circumstances of war and its essential nature, will agree with me that we cannot renounce the right to profit by all material means found on the theater of war in order to bring our difficult and responsible task to a successful issue; and that consequently we cannot adhere to the first Luxemburg amendment, which bears an absolute and peremptory character.

There remains to be considered the subsidiary amendment which we have before us.¹ The very fact that the delegation of Luxemburg presented this subsidiary proposition leads me to hope that it has not closed its eyes to the fact that there are some truly justifiable objections to be made, from a military point of view, to its original amendment.

The first paragraph of the second amendment is thus worded: "The maintenance of pacific relations, especially of commercial and industrial relations, existing between the inhabitants of belligerent and neutral States, merits particular protection on the part of the civil and military authorities." I venture to say that there is no one in this high assembly who does not heartily applaud the noble and truly humanitarian principle expressed in these words. The maintenance of the best relations between two neighboring States that are not at war with one another is without doubt highly desirable and even very useful for both parties. However, it seems to me that Article 70 of the Regulations respecting the treatment of neutrals is not the best place for the expression of this fundamental and unanimously recognized principle. This sentence says nothing concrete which could be carried into execution, and consequently if it is desired to expressly set forth this axiom in the Regulations it would perhaps be possible and preferable to put it in the form of a preamble at the head of the fifth section. Perhaps the drafting committee will charge itself with finding a suitable place. What I wish to do is merely to answer an observation of his Excellency Mr. EYSCHEN who expressed the opinion that by means of such a recommendation inscribed in the military catechism the rights of others, so worthy of respect, would be emphasized in the minds of those whom a legitimate ardor might otherwise threaten to carry beyond proper bounds. I cannot share this opinion. On the contrary, gentlemen, the increased responsibility in time of war which weighs on a superior military commander, far from leading him into unlawful ways, will rather render him more sensible and more attentive to the limits to be observed with respect to the population that may be for a time at his mercy.

The second paragraph of the Luxemburg amendment stipulates a delay in order that the neutral transportation material may be taken back to its country of origin. The days of grace accorded to merchant vessels which, at the declaration of war, happen to be in the ports of the belligerents, have been cited in support of this proposition.

Making allusion only in passing to the rights of embargo and of angary which, though disputed, are not yet abolished in common law and which constitute the right of requisition applied to naval war, I call attention to the difficulties of a purely technical nature that stand in the way of fixing such a delay in the domain of railways. While the sea is free for navigation and the voyages of ships

¹ Annex 40.

are made independently of rails and points so that each ship which is not [223] retained by the authorities can leave port whenever it deems best, railway service is bound by the strictest rules which cannot be violated without running great danger, and that is all the more the case during the mobilization of the army; this is why it is absolutely impossible to send back neutral material at the moment war is declared without deranging the entire transportation system of mobilization and concentration.

Paragraphs 3 and 4 of the Luxemburg proposition restrict requisition of neutral transportation material to cases of imperative necessity and the quantity to a minimum. Upon another occasion I have already said in this assembly that no military commander will require either personal services or neutral property except in cases of strict necessity. It seems to me that Article 54 of the present Regulations already contains all that can be demanded with regard to the consideration due railway material belonging to neutral States, and I feel that this article would suffice to prevent all abuse. Nevertheless I do not oppose the introduction of the provisions of these two paragraphs in order better to guarantee that the military requirements shall be limited to the strictly necessary. I think merely that it will be better to substitute for the words "within a short time" the expression used in the 1899 Regulations, "as soon as possible", which means if possible without any delay, or within as short a time as possible.

Moreover, it is to be noted that Article 54 of the 1899 Regulations relates only to the territory of the enemy State occupied by the adverse party, while the new provisions are more general and refer both to this territory and to the countries of the two belligerents. It will be the task of the drafting committee to settle this question.

There still remains the last paragraph of the Luxemburg amendment which claims the right on the part of the neutral State to retain material belonging to the requisitioning State which is found on its territory by way of compensation for that used by the belligerent. Even if it were desired to concede this right in principle, it would be very difficult to determine the quantity and duration of this compensatory retention. But I do not even consider such a measure just; should a belligerent profit by his right to requisition neutral material, he will do so only when he sees no other possible way to provide for the needs of the moment; such is not the case in the neutral State; even if it be occasionally inconvenienced by the lack of material, the case can never be spoken of as one of *force majeure*. It is rather to be feared that such retentions of material on the part of the neutral State would disturb, more than is worth while, the good relations between neighboring States, the maintenance of which I am agreed with the honorable author of the Luxemburg proposition in recognizing as of the highest importance.

His Excellency Mr. **Carlin** observes that without entering into details the delegation of Switzerland desires to state that it cordially supports in its entirety the proposition made by the delegation of Luxemburg, which his Excellency Mr. **EYSCHEN** developed so convincingly and with so much eloquence in our last meeting.

Major General Baron **Giesl von Gieslingen** declares that the delegation of Austria-Hungary joins entirely in the reasons just set forth by the military delegate of Germany, General **VON GÜNDELL**.

We consider that the maximum of the obligations that a belligerent State

can accept consists in the duty of making restitution, payment or indemnification after the war for all the material it has used during the campaign.

But the right to use this material, that is, to take it, no matter where it may be found or to whom it may belong, for the purpose of making such use [224] of it as is expedient,—this right and this faculty should not be limited or restricted, and each restriction in this regard would certainly prevent or restrict the prosecution of operations at moments often critical and important.

For these reasons we are opposed to the text of the Luxemburg amendment to Article 70 and can accept only the first and third paragraphs, that is, the sentences:

“The maintenance of pacific relations,” etc., etc.

“Requisitions on means of transportation,” etc.

His Excellency Mr. van den Heuvel observes that the question submitted to the Conference is that of determining to what extent immunity should be accorded to railway material coming from neutral States.

In principle every belligerent State may seize and requisition railway material and it may do so both on its own territory and on territory occupied by it.

No conventional exception exists to-day restricting its authority to seize enemy or neutral material on its own territory. But as regards seizures on occupied territory there is a restriction to be made. Railroads of the enemy can be seized only subject to restitution, railroads coming from neutral States cannot be seized, and the material must be allowed to return to unrestricted traffic.

Article 54 of the 1899 Convention on the laws of war is explicit. It says that the plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible. And Mr. ROLIN in his report explains the bearing of the provision: “The subcommission,” he says, “agreed with the drafting committee in thinking that it was sufficient to lay down the principle of restitution within a short time for the sole purpose of pointing out that the material belonging to neutrals, unlike that of belligerents, cannot be the object of seizure.”

The Belgian delegation supports the main proposition of Luxemburg because this proposition maintains Article 54 for occupied territory and extends it very justly, there being the same reason therefor, to the territories of the belligerents themselves.

The German delegation presents an entirely opposite proposition. In reality, according to the deduction one is obliged to make from it, it suppresses immunity against seizure enjoyed by neutral railways in occupied territory and requests the authorization everywhere of a right not only of seizure and utilization but even of expropriation.

Such a proposition appears inadmissible for two reasons.

The first is that each belligerent State must so equip its railroads that they may by their own means meet all the needs of the war, even those relating to hospital service. It cannot claim the right to reinforce its material by the addition of a part of the material belonging to a neutral State. It is clear that if neutrals send their cars into a neighboring territory it is in order to facilitate commerce and not that their material may serve as an aid and reinforcement to a belligerent.

The second reason is that the seizure of their railway material would constitute a grave infringement of the rights of neutrals, of their right to continue a peaceful commerce with the belligerent, and of their right to continue

within their own borders and with their other neighbors free business and trade relations.

The manifest necessity for the maintenance and generalization of the immunity now established by Article 54 has been too well explained by the delegate of Luxemburg for us not to give our entire adhesion to his main proposition which forbids the seizure of public transportation material belonging to [225] neutrals and forbids it in the territory of the belligerent as well as in the territory occupied by him.

Major General **Amourel** declares that in principle he supports the observations of the military delegate of Germany so far as concerns the first four paragraphs of the Luxemburg amendment; as to the last paragraph, the point of view of the French delegation is different but it may perhaps be possible to find a ground of conciliation. At the outbreak of a war there will be railway material of a neutral on the territory of the belligerent and the belligerent cannot be prevented from making use of this material in exchange for that which he himself will have in circulation among the neutrals; conformably to Article 54 this material will have to be sent back as soon as possible; but the right of neutrals to retain public transportation material in due compensation for material requisitioned by a belligerent State appears just and equitable, and for this reason the French delegation accedes to the last paragraph of the Luxemburg proposition.

His Excellency Lord **Reay** declares that the British delegation, considering that the Luxemburg proposition is the adoption of Article 54, will vote for this proposition with the exception of paragraph 2 which it regards as very difficult of execution.

Major General **von Gündell**, in answer to the observations of his Excellency Mr. **VAN DEN HEUVEL**, remarks that the German delegation has never contemplated suppressing Article 54; on the contrary it would consent to the stipulations of this article being extended to the territory of the two belligerents. He admits that there is a deficiency in Article 70 but it will be supplied by the acceptance of paragraphs 2 and 3 and by the extension of Article 54.

His Excellency Mr. **van den Heuvel** observes that according to the preparatory labors of the Convention of 1899, Article 54 expresses in a practical manner the principle that the material of a neutral State may not be seized by a belligerent. There might be occasion to repeat it here and to repeat it in the terms of Mr. **ROLIN**'s report, which are very clear.

His Excellency Mr. **Eyschen**: I thank the honorable members for the kind welcome they have so generously accorded the principles which inspired the amendments of Luxemburg.

The opinions exchanged will facilitate the work of the examination and drafting committee.

It was indeed to be foreseen that the main proposition would encounter opposition. Under present conditions, when a war breaks out the staff of the belligerent takes possession of all the rolling stock of the railroads, leaving nothing to provide for the peaceful needs of the populations. The difficulty lies in that our railroad yards are insufficient.

The departments of industry, commerce and labor, as well as the department of railroads, have therefore the imperative duty of encouraging the increase of transportation facilities in order that during hostilities the railroads may not, as at present happens, be out of condition to serve the most urgent needs of those who

wish to continue in their occupations. This is the surest means of diminishing the evils of war. Moreover, a little more justice will then enter into the relations with neighboring neutral States.

We appear to be of one accord as to inscribing in the Convention the principle that requisitions of neutral material must be made only in case of imperative necessity and that the duration of utilization must be reduced to the minimum. The agreeable, the useful, the necessary are three things which theoretically exclude one another. I have known persons for whom the [226] pleasures of life appeared to be the most imperative necessities. **DIOGENES** and **EPICURUS** held divergent views in their appreciation of the nature of necessity. That is why it is well to add that the maintenance of commercial, industrial and pacific relations is placed under the special protection of the authorities. One may have very great confidence in the superior commanders but the right of requisition may be and often will be delegated to heads of smaller detachments, to functionaries of an inferior order who may be lacking in prudence and cool judgment. Man grows by circumstances and the high purpose he holds in view. But there also lies danger. The bravest, the noblest hearts allow themselves to be the most easily led.

At the moment of action it is these to whom it is necessary to recall the consideration due to third parties whose interests must not be uselessly sacrificed. We still think that it is not only lawful but even very practicable to allow the neutrals, after the declaration of war, a delay sufficient to take back their railway material which is threatened with transformation into war material. In the great empires the war may be localized to one point on the frontier. The other neighboring zones will often remain free for ordinary traffic. The measure could be easily put into execution in such a case. And if we consider the disasters which the penury of rolling stock must occasion in the industrial world, both beyond and within the frontier, we shall be happy to allow the return to its country of origin of an equipment which will serve to maintain peaceful relations between the inhabitants of the neighboring countries.

It is the same with regard to the right of retention which we propose to see established for the benefit of the neutral, whose transportation facilities have been requisitioned in the belligerent country. The measure is entirely just. It is the only means of moderating the blows that strike commerce and of avoiding the increase of useless losses.

But such measures, it was said, may create difficulties. Do not requisitions also create them? It is the belligerents who take the first step. Each of the two States wishes to safeguard legitimate interests; indeed it must do so. Therefore both are authorized to act.

It is not by the payment of the bailment charges for cars that the neutral is indemnified. At such times the material, always insufficient, would bring far more.

But all those who are affected as a consequence, the neutrals who have no civic interest or obligation in serving the State which is at war,—one can do nothing for them; therefore, at least let their right of legitimate defense be recognized. In order that this last may not exceed its just limit the amendment provides that the retention shall be made in compensation to the extent it is due. It is therefore desired only to reestablish the broken equilibrium which, with the daily statistics of the railroad administration, will be very easy. To sum up, let us

say that the two States find themselves confronted by a case of *force majeure*, in the face of events which could not be prevented, and that consequently the same law will have to regulate their conduct.

The best plan will be, it seems, to refer the proposed texts to the Commission; since the same sentiment of justice and international solidarity unites us we shall be able to arrive at an agreement upon the principal points. In the discussion to which we have just devoted ourselves the difference of opinions manifested itself not merely between the States which are perpetually neutral and those which are not, but rather between the small and the great. These States, whose neutrality has been stipulated by the agreement of the great Powers, are in a certain measure sometimes laboratories for this practice of international law. By reason of their weakness they feel more keenly the consequences of certain acts. In pointing out these evils they render service to all. In future wars it is indeed possible that voluntary neutrality of the great Powers may be more often declared and the disadvantages pointed out by us will make themselves felt on a greater [227] scale. That is why, in proposing these amendments in the interest of neutrals, we can say to each State represented in this gathering: "*tua res agitur*."

His Excellency Mr. **Milovan Milovanovitch** shares the opinion of General **AMOUREL** that it is impossible to prevent requisitions of transportation material belonging to the neutral State in consequence of the imperative practical needs of the belligerent, and that for this reason it is necessary, in consideration of the same practical necessities, to recognize the right of the neutral State to exercise a kind of retaliation and retain material belonging to the belligerents by way of compensation. This retaliation must, however, be exercised in the same manner and under absolutely equal conditions with respect to both belligerents.

Upon the invitation of the **PRESIDENT** the delegate of Serbia writes out and submits to him, for discussion in the committee of examination, the following amendment.

A neutral State is required, however, to exercise this detention of transportation material at the same time and in the same measure with respect to all belligerent parties.

Colonel **Borel**, in reply to the remarks of his Excellency Mr. **MILOVANOVITCH** who spoke of a right of retaliation to be exercised by the neutral State, observes that this right can never be considered as having the character of reprisals to be exercised by the neutral to the prejudice of the belligerent who has retained railway material belonging to the former. The neutral State, thus deprived of a part of its material, will in turn often be forced by circumstances themselves to make use of the foreign material on its territory in order to ensure the maintenance of its domestic as well as international railway service. In this case, which will not fail to present itself, the application of the principle of compensation to the same extent, as set forth in the subsidiary amendment of the Luxemburg delegation, will be the only means by which the neutral State can observe impartiality towards both belligerents, preserve an even balance with respect to them, and act in such a way that neither of them may see its material increased or diminished through the act of the neutral State.

The **President** proposes to refer Article 70 of the German proposition¹ to the committee of examination, and it is so ordered.

¹ Annex 36.

The **PRESIDENT** then places under discussion Article 71 of the German proposition, thus worded:

Neutral vessels and their cargoes can be expropriated or used by a belligerent party only if these vessels are used for river navigation within its territory or within the enemy territory.

In case of expropriation the indemnity shall equal the entire valuation of the vessel or of the cargo plus ten per cent. In case of use, it shall equal the ordinary charges plus ten per cent. These indemnities shall be paid immediately and in specie.

as well as the Austro-Hungarian amendment proposing to insert between the words "*navigation*" and "*within*" in the second line of the first paragraph "*or small coasting trade*" (*petit cabotage*).

Major General **von Gündell** declares his acceptance of the Austro-Hungarian amendment.

His Excellency Mr. **van den Heuvel** states that Article 70 establishes the rule that all neutral movable property may be requisitioned and expropriated. Article 71 of the German proposition proposes an exception to this rule. He does not understand why the cargo of vessels cannot be expropriated, when if this cargo should happen to be on a wharf or in a warehouse the military authority could claim it.

[228] Major General **von Gündell** remarks that according to the spirit of the German proposition all neutral property is subject to expropriation.

We wished to exempt vessels in port and on the sea, holding that the sea should be free for navigation, but we were unwilling to extend this provision to river navigation.

His Excellency Mr. **van den Heuvel** observes that he clearly sees the distinction but does not understand the reasons for it. He considers it legitimate not to allow the seizure of transportation facilities, vessels as well as railway material. But by virtue of what reason should the cargoes of vessels escape requisition when railway cargoes are subject thereto.

Lieutenant Colonel **van Oordt** offers some observations touching the expression "*small coasting trade*" used in the Austro-Hungarian amendment.

It is not merely a question of words, he says, but rather a question of principle that I have in view. But even in case the observations should relate only to the use of these words, this would still be an important question from a practical standpoint because it is only by the medium of words that one attains ideas. And especially here, where it is nothing less than a question of the conventional law relating to expropriation in time of war, it is necessary to reach an entirely clear understanding as to the meaning of the expressions used, since, lacking that, one thing would be taken for another. This question is of great importance, particularly for countries, such as Austro-Hungary and the Netherlands, where maritime rivers are found, that is to say, rivers that are over a great extent navigable by seagoing vessels.

As the name already implies, the expression "*coasting trade*" in its proper sense relates only to maritime navigation along the coasts (what is called in German "*Küstenfrachtfahrt*"), and in international and national law the term indicates the navigation between the seaports of the same country. But here the expression "*small coasting trade*" is already encountered, for example in France

where these words designate navigation between the French seaports situated on the same coast (for example between Brest and Havre), while by "long-distance coasting trade" (*grand cabotage*) is meant the maritime navigation between ports situated on different coasts (for example between Brest and Marseilles). Moreover, the small and the long-distance coasting trade together embrace all maritime navigation between French national ports.

By extension the term "coasting trade" is used also to indicate river navigation or transportation between river ports by seagoing vessels. These vessels are used then for a double purpose: they serve for ocean trade and at the same time for river trade. In order to distinguish this river navigation by seagoing vessels from coasting trade properly so-called or maritime, it is termed "small coasting trade." Thus, here is already a second meaning given to this expression.

But even if we refer only to river navigation, this last meaning is far from being generally adopted. In 1888, for example, the Institute of International Law elaborated "Regulations for the navigation of international rivers." In the second paragraph of Article 8 of this draft adopted by the Institute it is said:

Foreign vessels, whether seagoing or for river navigation, shall not be admitted to regular small coasting trade, that is, to exclusive and continuous traffic between the ports of the same State located on the river, except by special concession of that State.

Here, then, is a third interpretation of the expression "small coasting trade." In this case it is not the nature of the vessels that constitutes the characteristic sign of the small coasting trade but only the navigation between river ports of the same country without distinction of vessels, that is, with vessels either [229] seagoing or for river navigation. All who have read the interesting studies of Mr. ENGELHARDT on international rivers know that this author designates as "small coasting trade" river navigation between ports of the same country, and as "long-distance coasting trade" river navigation between ports of different countries.

This interpretation would also necessarily involve a part of the vessels of the long-distance coasting trade in the right of expropriation, that is, the vessels which serve in their river navigation exclusively for transportation between ports of the two belligerent parties. In view of this diversity of explanations given to the words "small coasting trade" it would be from a practical point of view very desirable not to use this expression in a convention. Above all, when dealing with the power of belligerent parties with respect to neutral property it is necessary to carefully avoid all equivocation and ambiguity.

And now permit me to touch also upon the principle of the question and to ask upon what is founded the right of the belligerent to appropriate neutral maritime vessels which are entirely free in naval warfare. Is it because of the sole fact that apart from their maritime navigation they also engage in river navigation on the territory of the belligerents? Why, in the matter of expropriation, should the river character outweigh the maritime character? In my opinion the maritime character should outweigh the river character. But in any case there will be a certain class of neutral maritime vessels which, in addition to their navigation on the high seas, also engage in river traffic exclusively in the territory of one or both of the belligerents and which must be excluded before all from expropriation: these are the vessels which come from neutral seaports. Perhaps

it is also the intention of the amendment to exclude them but this intention could not be deduced in an entirely clear manner on account of the diversity of explanations given to the words "small coasting trade." As a matter of fact it is possible for a vessel not to cross a neutral frontier in its river "coasting trade," and nevertheless come from a neutral seaport or have such a port for final destination in its maritime voyage.

In case the expropriation of neutral maritime vessels should not be excluded once for all, it would nevertheless be necessary to exclude vessels which, even outside of their river navigation, would touch at a neutral port. And in any case the expression "small coasting trade," whose meaning is far from being beyond doubt, should not be used.

I do not wish to make a proposition in this direction. I am absolutely convinced that the committee of examination is much more competent than I to find a suitable wording. It is only to indicate my purpose that I take the liberty of giving the following modified text of the first paragraph of Article 71:

Neutral vessels, whether river or maritime, and their cargo can be expropriated or utilized by a belligerent party only when these vessels belong to the river shipping in the territory of the belligerent parties, to the exclusion however of those which in the course of their voyage engage at the same time in trade with one or several neutral ports, either river or sea ports.

In concluding, I repeat that neutral maritime vessels are mentioned only in case their expropriation should not be excluded once for all, and with a view to excluding in such case at least the vessels coming from neutral seaports, even if in their river navigation they are employed exclusively in transportation between ports of the belligerent parties.

Major General **Giesl von Gieslingen** desires to reply to the statements of Lieutenant Colonel **VAN OORDT** but reserves the right to do so in the committee of examination, to which the question is referred on the request of the speaker.

[230] The **President** reads Article 72, thus worded, which is adopted without remark:

Indemnity for the destruction or injury of neutral personal property, due solely to its use for military purposes, shall likewise be settled in conformity with the principles laid down in Articles 70 and 71.

The **PRESIDENT** then reads Articles 57*a* and 57*b* of the proposition of the Japanese delegation, which were referred by the first subcommission to the second, and remarks that the question of placing them remains reserved.

NEW ARTICLE 57*a*

Officers or other members of the armed forces of a belligerent, interned by a neutral State, cannot be set at liberty or authorized to reenter their country except with the consent of the adverse party and under the conditions stipulated by it.

NEW ARTICLE 57*b*

A parole given to a neutral State by the persons mentioned in Article 57*a* shall be, in case of violation, deemed equivalent to one given to the adverse party.

His Excellency Mr. **Keiroku Tsudzuki** speaks as follows:

The propositions we have submitted to the consideration of the high assembly are in our opinion sufficiently clear in themselves not to need any explanation whatever. In fact, Article 57 seems to establish the principle that neutrals are obligated to intern all belligerent troops, as far as it is possible of course, for the entire duration of the war. But there are many cases where it would not be necessary to impose this heavy responsibility upon the neutrals.

On the other hand there have been cases, isolated most certainly but there have been some, in the history of the past when neutrals have liberated these prisoners without the previous consent of the other belligerent. In any case Article 57*a* is in the same category with Article 57 of the Regulations of the laws and customs of war on land and Articles 13 and 15 of the draft convention concerning hospital ships.

Article 57*b* is merely the necessary complement of the principle laid down by Article 10 of the Regulations respecting the laws and customs of war on land.

Brigadier General Davis declares that the delegation of the United States warmly supports the propositions of the Japanese delegation.

The President proposes to refer Articles 57*a* and 57*b* to the committee of examination, which is approved.

On the proposition of the President the amendment of the delegation of Denmark¹ concerning "the mobilization of the military forces of the neutrals" is referred to the committee of examination.

He observes that this temporarily terminates the labors of the second sub-commission which will have to meet again to discuss the report to be submitted to it by the committee of examination,² and, after having the nomination of General Davis approved as member of the latter, he adjourns the meeting at 12:10

¹ Annex 31

² The report in question was presented to the Commission (third meeting).

ANNEXES

Annex 1

**REGULATIONS OF 1899 RESPECTING THE LAWS AND
CUSTOMS OF WAR ON LAND (ANNEX TO THE CON-
VENTION)**

SECTION I.—ON BELLIGERENTS

CHAPTER I.—*The qualifications of belligerents*

ARTICLE 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;
2. That they have a fixed distinctive emblem recognizable at a distance;
3. That they carry arms openly; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they respect the laws and customs of war.

ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.—*Prisoners of war*

ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

ARTICLE 6

The State may utilize the labor of prisoners of war according to their rank and aptitude. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honor, scrupulously to fulfill, both towards their own Government and the Government by which they were made prisoners, the engagement they have contracted.

[235] In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospitals and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and of giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ARTICLE 16

Information bureaux enjoy the privilege of free postage. Letters, money orders, valuables, as well as parcels by post, intended for prisoners of [236] war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III.—*The sick and wounded*

ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

SECTION II.—ON HOSTILITIES

CHAPTER I.—*Means of injuring the enemy, sieges, and bombardments*

ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden:

- (a) To employ poison or poisoned weapons;
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
- [237] (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;
- (d) To declare that no quarter will be given;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f) To make improper use of a flag of truce, of the national flag, or of the

military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

ARTICLE 25

It is forbidden to attack or bombard towns, villages, dwellings or buildings that are not defended.

ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 28

It is forbidden to give over to pillage even a town or place taken by storm.

CHAPTER II.—*Spies*

ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, entrusted with the delivery [238] of dispatches intended either for their own army or for the enemy's army.

To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

ARTICLE 30

A spy taken in the act shall not be punished without previous trial.

ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III.—*Parlementaires*

ARTICLE 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him.

ARTICLE 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

ARTICLE 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV.—*Capitulations*

ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honor.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices*

ARTICLE 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

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ARTICLE 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

ARTICLE 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

ARTICLE 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theater of war with the populations and between them.

ARTICLE 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ARTICLE 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

SECTION III.—ON MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ARTICLE 43

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

[240]

ARTICLE 46

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ARTICLE 47

Pillage is formally forbidden.

ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given.

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war. Railway plant, land

telegraphs, telephones, steamers and other ships, apart from cases gov-
[241] erned by maritime law, as well as depots of arms and generally all kinds

of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

ARTICLE 54

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

ARTICLE 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

ARTICLE 56

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or willful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

SECTION IV.—ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL COUNTRIES

ARTICLE 57

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war.

It may keep them in camps, and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

ARTICLE 58

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

ARTICLE 59

A neutral State may authorize the passage over its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

Wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ARTICLE 60

The Geneva Convention applies to sick and wounded interned in neutral territory.

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AMENDMENTS TO THE REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND¹

Annex 2

PROPOSITION OF THE GERMAN DELEGATION

ARTICLE 1

Add to No. 2 of paragraph 1, the words: "and notification of which shall have been made previously to the hostile party."

ARTICLE 2

Replace the words at the end: "if they respect the laws and customs of war," by: "if they carry arms openly and if they respect the laws and customs of war."

NEW ARTICLE 22a

It is forbidden to compel *ressortissants* of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

ARTICLE 23

Change the end of the article by the addition of a new paragraph *h*, as follows: to declare abolished, suspended or inadmissible the private claims of the *ressortissants* of the hostile party.

ARTICLE 44

To be omitted, in view of Article 22a.

Annex 3

AMENDMENT OF THE AUSTRO-HUNGARIAN DELEGATION TO THE PROPOSITION OF THE GERMAN DELEGATION²

NEW ARTICLE 22a

Insert after the words: "to take part," the words: "as combatants."

¹ Annex 1.

² Annex 2.

[243]

Annex 4**PROPOSITION OF THE NETHERLAND DELEGATION****NEW ARTICLE 44a**

It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defense of their country.

Follow Article 45 by an Article 45a, providing:

It is forbidden to punish an inhabitant of an occupied territory by death without a sentence of a war council.

This sentence must be sanctioned before it is executed by the commander in chief of the army.

Annex 5**PROPOSITION OF THE DELEGATION OF THE REPUBLIC OF CUBA****ARTICLE 5**

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety, *and only while the circumstances which necessitate the measure continue to exist.*

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as *of releases on parole, exchanges, escapes, admissions into hospital and deaths.*

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc. . . . found on the field of battle or left by prisoners who have *been released on parole, or exchanged, or who have escaped* or died in hospitals or ambulances, and to forward them to those concerned.

[244]

Annex 6

PROPOSITION OF THE SPANISH DELEGATION

ARTICLE 6

First paragraph.

The State may utilize the labor of prisoners of war according to their aptitude, officers excepted.

Second paragraph.

Omit the words "after deducting the cost of their maintenance."

Annex 7

PROPOSITION OF THE AUSTRO-HUNGARIAN DELEGATION

ARTICLE 46

Family honor and rights, the lives of persons, religious convictions and practice, as well as *in principle* private property, must be respected.

ARTICLE 53

Railway plant, *telegraphs, telephones, steamships, and other vessels, vehicles of all kinds, in a word, all means of communication operated on land, at sea and in the air for the transmission of persons, things and news*, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

Annex 8AMENDMENT OF THE RUSSIAN DELEGATION TO THE PROPOSITION OF THE DELEGATION OF AUSTRIA-HUNGARY ¹

ARTICLE 53

Second paragraph.

After the words "*vehicles of all kinds*," insert the words "*as well as teams, saddle animals, draft and pack animals*."

¹ Annex 7.

[245]

Annex 9**PROPOSITION OF THE NETHERLAND DELEGATION****ARTICLE 35**

Add a new paragraph, as follows:

The capitulation to the enemy of an armed force is not obligatory for the detachments of that armed force which are separated from it by such a distance that they have preserved a liberty of action sufficient to continue the struggle independently of the main body.

Annex 10**PROPOSITION OF THE JAPANESE DELEGATION**

Amendment to the Regulations of 1899 respecting the laws and customs of war on land

ARTICLE 4

Modify the third paragraph as follows:

All their personal belongings, except arms, horses, military papers, *and all other objects appropriate for military use*, remain their property.

ARTICLE 6

Add to the end of the third paragraph, the words:

or if there are no rates in force, at a rate suitable for the work executed.

NEW ARTICLE 13a

The *ressortissants* of a belligerent, inhabiting the territory of the opposing party shall not be interned unless the exigencies of war make it necessary.

ARTICLE 14

Add after the second phrase the following provision:

The individual return shall be sent to the Government of the other belligerent after the conclusion of peace; the bureau must state in it the regimental number, name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.

ARTICLE 17

The Government will grant, if necessary, to officers who are prisoners in its hands, a suitable pay, the amount to be refunded by their Government.

¹ Annex 1.

[246]

NEW ARTICLE 57a¹

Officers or other members of the armed forces of a belligerent, interned by a neutral State, cannot be set at liberty or authorized to re-enter their country except with the consent of the adverse party and under the conditions stipulated by it.

NEW ARTICLE 57b¹

A parole given to a neutral State by the persons mentioned in Article 57a shall be deemed equivalent to one given to the adverse party.

Annex 11

PROPOSITION OF THE ITALIAN DELEGATION

Amendments to the proposition of the delegation of Japan²

ARTICLE 13 a

The ressortissants of a belligerent State shall continue to enjoy, in the territory of the hostile party, the protection of the local laws with respect to their persons, their property and their business.

The State, however, shall have the right:

1. To remove them from localities where their presence might be considered dangerous to its safety or to its military interests; a reasonable delay should be given them for this purpose, according to the circumstances which may have determined the adoption of this measure;

2. To expel individuals whose conduct might be considered dangerous from the same point of view.

Annex 12

PROPOSITION OF THE DANISH DELEGATION

Amendment to the Regulations of 1899 respecting the laws and customs of war on land³

ARTICLE 53

Insert at the end of the article the following provisions:

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

¹ See Annex 32.

² Annex 10.

³ Annex 1.

[247]

Annex 13

PROPOSITION OF THE GERMAN DELEGATION

*Indemnification for violation of the Regulations of 1899 respecting the laws and customs of war on land*¹

ARTICLE 1

A belligerent party which shall violate the provisions of these Regulations to the prejudice of neutral persons shall be liable to indemnify those persons for the wrong done them. It shall be responsible for all acts committed by persons forming part of its armed forces. The estimation of the damage caused and the indemnity to be paid, unless immediate indemnification in cash has been provided, may be postponed, if the belligerent party considers that such estimate is incompatible, for the time being, with military operations.

ARTICLE 2

In case of violation to the prejudice of the hostile party, the question of indemnity will be settled at the conclusion of peace.

Annex 14

PROPOSITION OF THE BELGIAN DELEGATION

*Amendment to the Regulations of 1899 respecting the laws and customs of war on land*²

ARTICLES 44 AND 44 a

Replace Article 44 (whatever the place to which it may be assigned) and Article 44a proposed by the Netherland delegation by the following text:

It is forbidden to force the inhabitants of occupied territory to take part personally either directly or indirectly, collectively or individually, in military operations against their country and to demand of them information in view of such operations.

¹ Annex 1.

² *Ibid.*

[248]

Annex 15**PROPOSITION OF THE RUSSIAN DELEGATION**

*Amendment to the Regulations of 1899 respecting the laws and customs of war on land*¹

ARTICLE 52

Complete the article by a provision worded as follows:

Commanders of military forces, when in occupied territory, shall be authorized to redeem, as soon as possible during the continuance of hostilities, the receipts given for contributions in kind called for by the needs of the army of occupation.

Annex 16

DRAFT AMENDMENTS TO THE REGULATIONS OF 1899 RESPECTING THE LAWS AND CUSTOMS OF WAR, ELABORATED BY THE FIRST SUBCOMMISSION

Text of the Regulations respecting the laws and customs of war on land, annexed to the Convention of July 29, 1899.

ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they respect the laws and customs of war.

ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

Amendments proposed by the sub-commission.

ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents *if they carry arms openly and if they respect the laws and customs of war.*

ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety, *and only while the circumstances which necessitate the measure continue to exist.*

¹ Annex 1.

ARTICLE 6

The State may utilize the labor of prisoners of war according to their rank and aptitude.

[249] Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospital and deaths.

ARTICLE 6

The State may utilize the labor of prisoners of war according to their rank and aptitude, *officers excepted*.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army, *or, if there are none in force, at a rate suitable for the work executed*.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. *The individual return shall be sent to the Government of the other belligerent after the conclusion of peace; the bureau must state in it the regimental number, name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.* It is kept informed of internments and transfers, as well as of releases on parole, exchanges, escapes, admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden:

[250] (a) To employ poison or poisoned weapons;

(b) To kill or wound treacherously individuals belonging to the hostile nation or army;

(c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;

(d) To declare that no quarter will be given;

(e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners *released on parole, exchanged, escaped* or who have died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 17

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its army are entitled, the amount to be refunded by their Government.

ARTICLE 22 a

It is forbidden to compel ressortissants of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden:

(a) To employ poison or poisoned weapons;

(b) To kill or wound treacherously individuals belonging to the hostile nation or army;

(c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;

(d) To declare that no quarter will be given;

(e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or

seizure be imperatively demanded by the necessities of war.

ARTICLE 25

It is forbidden to attack or bombard towns, villages, dwellings or buildings that are not defended.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as

seizure be imperatively demanded by the necessities of war.

(h) To declare abolished, suspended, or inadmissible in a court of law the private claims of the ressortissants of the hostile party.

ARTICLE 25

It is forbidden to attack or bombard by any means whatsoever towns, villages, dwellings or buildings that are not defended.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, *and historic monuments*, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 44 a

It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defense of their country.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources as not to involve the population in the of the country, and of such a nature obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as

possible, be paid for in cash; if not, a receipt shall be given.

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ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

possible, be paid for in cash; if not, a receipt shall be given, *and payment shall be arranged as soon as possible.*

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and generally, all movable property belonging to the State which may be used for the operations of the war.

All means of communication and of transport operated on land, at sea and in the air, for the transmission of persons, things and news, as well as depots of arms and generally all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

NEW ARTICLE relative to the indemnification for violation of the Hague Regulations respecting the laws and customs of war on land.

A belligerent party which shall violate the provisions of the present Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Annex 17

PROPOSITION OF THE DELEGATION OF THE UNITED STATES
OF AMERICA

Amendment to the Declaration of 1899 concerning the employment of bullets which expand, etc.

The employment of bullets that inflict unnecessarily cruel wounds, such as explosive bullets and, in general, every kind of bullet that exceeds the limit necessary for placing a man immediately *hors de combat*, shall be forbidden.

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Annex 18

Declaration of 1899 concerning the interdiction of the launching of projectiles and explosives from balloons.

The contracting Powers agree, for a term of five years, to forbid the throwing of projectiles and explosives from balloons or by other new methods of similar nature.

The present Declaration is only binding on the contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification ad-

Draft declaration presented by the Belgian delegation.

The contracting Powers agree, for a term of five years, to forbid the throwing of projectiles and explosives from balloons or by other new methods of similar nature.

The present Declaration is only binding on the contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

Non-signatory Powers may adhere to the present Declaration.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith

dressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

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OPENING OF HOSTILITIES**Annex 19**

QUESTIONNAIRE PREPARED BY HIS EXCELLENCY MR. T. M. C. ASSER, PRESIDENT OF THE SECOND SUBCOMMISSION OF THE SECOND COMMISSION, TO SERVE AS A BASIS FOR DISCUSSION.

1

Is it desirable to establish an international understanding relative to the opening of hostilities?

(On the supposition of an affirmative response to this question:)

2

Is it best to require that the opening of hostilities be preceded by a declaration of war or an equivalent act?

3

Is it best to fix upon a time which must elapse between the notification of such an act and the opening of hostilities?

4

Should it be stipulated that the declaration of war or equivalent act be notified to neutrals?

And by whom?

5

What should be the consequences of a failure to observe the preceding rules?

6

What is the diplomatic form in which it is best to set out the understanding?

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Annex 20**PROPOSITION OF THE FRENCH DELEGATION****ARTICLE 1**

The contracting Powers recognize that hostilities between themselves must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay.

Annex 21**PROPOSITION OF THE BELGIAN DELEGATION***Amendment to Article 2 of the Proposition of the French Delegation*¹**ARTICLE 2**

The existence of a state of war must be notified to the neutral Powers.

This notification, which may be given even by telegraph, shall not take effect in regard to them until forty-eight hours after its receipt.

Annex 22**PROPOSITION OF THE NETHERLAND DELEGATION***Amendments to the Proposition of the French Delegation*²**ARTICLE 1**

The contracting Powers recognize that hostilities between themselves must not commence until the lapse of twenty-four hours after an explicit warning, having the form of a reasoned declaration of war, or of an ultimatum with conditional declaration of war, has officially come to the attention of the adversary's Government.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay, and shall not begin with regard to them until after the notification thereof has officially come to their attention.

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Annex 23**DRAFT REGULATIONS RELATING TO THE OPENING OF HOSTILITIES, ELABORATED BY THE COMMITTEE OF EXAMINATION****ARTICLE 1**

The contracting Powers recognize that hostilities between themselves must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. However, it is understood that neutral Powers cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

¹ Annex 20.

² *Ibid.*

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RIGHTS AND DUTIES OF NEUTRAL STATES ON LAND

Annex 24

PROPOSITION OF THE FRENCH DELEGATION

ARTICLE 1

A neutral State cannot be responsible for acts of its subjects of which a belligerent complains unless the acts have been committed on its own territory.

ARTICLE 2

A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. But its responsibility is not engaged by the fact of certain of its citizens crossing the frontier to offer their services to one or other of the belligerents.

ARTICLE 3

A neutral State is not called upon to prevent its subjects from exporting arms, munitions of war, or, in general, from furnishing anything which can be of use to an army, for the account of one or other of the belligerents.

ARTICLE 4

Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free.

Annex 25

PROPOSITION OF THE DELEGATION OF GREAT BRITAIN

*Amendments to the proposition of the French delegation*¹

ARTICLE 1

A neutral State cannot be responsible for acts of its subjects of which a belligerent complains unless the acts have been committed on its own territory.

ARTICLE 2

A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. But its responsibility is not engaged by the fact of certain of its citizens crossing the frontier to offer their services to one or other of the belligerents.

¹ Annex 24.

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ARTICLE 3

A neutral State is not called upon to prevent its subjects from exporting arms, munitions of war, or, in general, from furnishing anything which can be of use to an army, for the account of one or other of the belligerents.

ARTICLE 4

Prisoners who, having escaped from the territory of the belligerent which held them [*or from enemy territory occupied by a belligerent*], arrive in a neutral country shall be left free.

[ARTICLE 5]

[A neutral State is bound to prevent the erection on its territory of a wireless telegraph station or any other apparatus for the purpose of communicating with belligerent forces on land or on sea.]

[ARTICLE 6]

[All passage is prohibited across neutral territory of troops, munitions of war, or war supplies for the account of a belligerent.]

Annex 26

PROPOSITION OF THE SWISS DELEGATION

*Amendments to the proposition of the French delegation*¹

ARTICLE 1

Word Article 1 as follows:

A neutral State is not called upon to repress acts in violation of neutrality except when the said acts have been committed on its own territory.

ARTICLE 2

Modify the wording of the article as follows:

A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. But its responsibility is not engaged by the fact of *persons* crossing the frontier *separately* to offer their services to one or other of the belligerents.

ARTICLE 4

Complete the article as follows:

Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free, *if the neutral State receives them and allows them to remain, which it is not obliged to do.*

¹ Annex 24.

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Annex 27**PROPOSITION OF THE NETHERLAND DELEGATION***Amendments to the proposition of the French delegation*¹**ARTICLE 4**

Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country, and those who arrive there as prisoners of war of an armed force that has taken refuge in the neutral territory shall be left free.

NEW ARTICLE 5

War *matériel* which an armed force captured from the enemy and which it takes with it when taking refuge in neutral territory shall be restored by the Government of such territory to the State from which it was captured after the conclusion of peace.

Annex 28**PROPOSITION OF THE NETHERLAND DELEGATION***Amendment to the proposition of the French delegation*²**NEW ARTICLE**

If a neutral State, in order to discharge the duties imposed by neutrality is obliged to resort to arms, this fact shall not be charged against it as a hostile act.

Annex 29**PROPOSITION OF THE GERMAN DELEGATION***Amendment to the proposition of the French delegation*³**NEW ARTICLE 4 a**

A neutral State is not called upon to forbid or restrict, on behalf of the belligerent parties, the use of cables and telegraphs, including wireless telegraphy, located in its territory.

¹ Annex 24.² *Ibid.*³ *Ibid.*

Every prohibition or restriction shall be applied indifferently to both parties.

The provisions of the two preceding paragraphs are also applicable to cables and telegraphs, with or without wire, belonging to companies or private individuals.

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Annex 30

PROPOSITION OF THE BELGIAN DELEGATION

*Amendments to the proposition of the French delegation and to the amendments presented by the delegations of Germany, Great Britain, the Netherlands and Switzerland*¹

ARTICLE 1 [new]

The territory of neutral States is inviolable.

ARTICLE 2²

Passage is forbidden across neutral territory of troops or of convoys of either munitions of war or supplies destined for a belligerent.

ARTICLE 3³

Corps of combatants cannot be formed nor recruiting agencies opened on neutral territory to assist a belligerent.

The responsibility of a neutral State is not engaged by the fact of persons crossing the frontiers separately to offer their services to one of the belligerents.

ARTICLE 4⁴

A neutral State which receives prisoners, escaped or brought by troops taking refuge in its territory, may leave them at liberty or assign them a place of residence.

ARTICLE 5⁵

A neutral State is not called upon to prevent the export or transport, with a belligerent country as destination, of arms, munitions of war, or in general of anything which can be of use to an army.

ARTICLE 6⁶

A neutral State is not called upon to forbid or restrict the use, for communicating with belligerent parties, of telegraph or telephone cables or of wireless

¹ Annexes 24-29.

² Compare Article 6 of the English amendment (annex 25).

³ Compare Article 2 of the French proposition (annex 24) and the Swiss amendment (annex 26).

⁴ Compare Article 4 of the French proposition and amendments of England, the Netherlands (annex 27) and Switzerland

⁵ Compare Article 3 of the French proposition.

⁶ Compare German amendment (annex 29).

telegraphy apparatus belonging to it or to companies or to private individuals.

The prohibitions or restrictions which may be established must be applied impartially to both belligerent parties.

ARTICLE 7¹

The installation on neutral territory is forbidden of a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or on sea.

ARTICLE 8²

A neutral State is not bound to suppress acts in violation of neutrality committed by its nationals outside its own territory.

Annex 31

PROPOSITION OF THE DANISH DELEGATION

If, in order to prepare in due time for the defense of its neutrality, a neutral State mobilizes its military forces, even before receiving notice from one of the belligerents of the commencement of a war, this act shall not be considered as an unfriendly act towards either of the parties in dispute.

Annex 32

PROPOSITION OF THE JAPANESE DELEGATION

AMENDMENT TO THE REGULATIONS OF 1899 RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

*Proposition referred by the first subcommission to the second subcommission*³

NEW ARTICLE 57a

Officers or other members of the armed forces of a belligerent, interned by a neutral State, cannot be set at liberty or authorized to reenter their country except with the consent of the adverse party and under the conditions stipulated by it.

NEW ARTICLE 57b

A parole given to a neutral State by the persons mentioned in Article 57a shall be deemed equivalent to one given to the adverse party.

¹ Compare Article 5 of the English amendment.

² Compare Article 1 of the French proposition and the Swiss amendment.

³ Annex 10.

Annex 33

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF EXAMINATION
STATES

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I
FRENCH PROPOSITION
Annex 24

ARTICLE 1

A neutral State cannot be responsible for acts of its subjects of which a belligerent complains unless the acts have been committed on its own territory.

ARTICLE 2

A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. But its responsibility is not engaged by the fact of certain of its citizens crossing the frontier to offer their services to one or other of the belligerents.

ARTICLE 3

A neutral State is not called upon to prevent its subjects from exporting arms, munitions of war, or, in general, from furnishing anything which can be of use to an army, for the account of one or other of the belligerents.

ARTICLE 4

Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free.

II

ENGLISH PROPOSITION
Annex 25

ARTICLE 1

Idem.

ARTICLE 2

Idem.

ARTICLE 3

Idem.

ARTICLE 4

Prisoners who, having escaped from the territory of the belligerent which held them or from enemy territory occupied by a belligerent, arrive in a neutral country shall be left free.

III

SWISS PROPOSITION
Annex 26

ARTICLE 1

A neutral State is not called upon to repress acts in violation of neutrality except when the said acts have been committed on its own territory.

ARTICLE 2

A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. But its responsibility is not engaged by the fact of persons crossing the frontier separately to offer their services to one or other of the belligerents.

ARTICLE 4

Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free, if the neutral State receives them and allows them to remain, which it is not obliged to do.

RELATIVE TO THE DRAFT REGULATIONS ON THE RIGHTS AND DUTIES OF NEUTRAL
ON LAND

[263] IV
NETHERLAND PROPOSITION
Annexes 27 and 28

ARTICLE 4

Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country, and those who arrive there as prisoners of war of an armed force that has taken refuge in the neutral territory shall be left free.

V
GERMAN PROPOSITION
Annex 29

VI
BELGIAN PROPOSITION
Annex 30

ARTICLE 1

The territory of neutral States is inviolable.

ARTICLE 8

A neutral State is not bound to suppress acts in violation of neutrality committed by its nationals outside its own territory.

ARTICLE 3

Corps of combatants cannot be formed nor recruiting agencies opened on neutral territory to assist a belligerent.

The responsibility of a neutral State is not engaged by the fact of persons crossing the frontiers separately to offer their services to one of the belligerents.

ARTICLE 5

A neutral State is not called upon to prevent the export or transport, with a belligerent country as destination, of arms, munitions of war, or in general of anything which can be of use to an army.

ARTICLE 4

A neutral State which receives prisoners, escaped or brought by troops taking refuge in its territory, may leave them at liberty or assign them a place of residence.

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF EXAMINATION
STATES

[264]

I
FRENCH PROPOSITION
Annex 24

II
ENGLISH PROPOSITION
Annex 25

III
SWISS PROPOSITION
Annex 26

ARTICLE 5

A neutral State is bound to prevent the erection on its territory of a wireless telegraph station or any other apparatus for the purpose of communicating with belligerent forces on land or on sea.

ARTICLE 6

All passage is prohibited across neutral territory of troops, munitions of war, or war supplies for the account of a belligerent.

RELATIVE TO THE DRAFT REGULATIONS ON THE RIGHTS AND DUTIES OF NEUTRAL
ON LAND

[265] IV
NETHERLAND PROPOSITION
Annexes 27 and 28

V
GERMAN PROPOSITION
Annex 29

VI
BELGIAN PROPOSITION
Annex 30

ARTICLE 4a

A neutral State is not called upon to forbid or restrict, on behalf of the belligerent parties, the use of cables and telegraphs, including wireless telegraphy, located in its territory.

Every prohibition or restriction shall be applied indifferently to both parties.

The provisions of the two preceding paragraphs are also applicable to cables and telegraphs, with or without wire, belonging to companies or private individuals.

ARTICLE 6

A neutral State is not called upon to forbid or restrict the use, for communicating with belligerent parties, of telegraph or telephone cables, or of wireless telegraphy apparatus belonging to it or to companies or to private individuals.

The prohibitions or restrictions which may be established must be applied impartially to both belligerent parties.

ARTICLE 7

The installation on neutral territory is forbidden of a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or on sea.

ARTICLE 5

War matériel which an armed force captured from the enemy and which it takes with it when taking refuge in neutral territory shall be restored by the Government of such territory to the State from which it was captured after the conclusion of peace.

NEW ARTICLE

If a neutral State, in order to fulfil duties imposed by neutrality, is obliged to have recourse to arms, this act shall not be deemed a hostile act.

ARTICLE 2

Passage is forbidden across neutral territory of troops or of convoys of either munitions of war or supplies destined for a belligerent

[266]

Annex 34

**DRAFT REGULATIONS ON THE RIGHTS AND DUTIES OF
NEUTRAL STATES, ELABORATED BY THE COMMITTEE OF
EXAMINATION**

ARTICLE 1

The territory of neutral States is inviolable.

ARTICLE 2

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral State.

ARTICLE 3

Belligerents are likewise forbidden :

(a) To erect on the territory of a neutral State a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or sea ;

(b) To use any installation of this kind established by them before the war on the territory of a neutral State.

ARTICLE 4

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral State to assist the belligerents.

ARTICLE 5

The neutral State must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to suppress acts in violation of neutrality, especially those forbidden in Article 4, unless the said acts have been committed on its own territory.

ARTICLE 6

The responsibility of a neutral State is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

ARTICLE 7

A neutral State is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

ARTICLE 8

A neutral State is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

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ARTICLE 9

Every measure of restriction or prohibition taken by the neutral State in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

ARTICLE 10

A neutral State which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral State.

ARTICLE 11

The fact of a neutral State resisting, even by force, attempts to violate its neutrality cannot be regarded as an act of hostility.

Annex 35

PROPOSITION OF THE RUSSIAN DELEGATION

*Amendment to the draft Regulations elaborated by the committee of examination*¹

ARTICLE 3

Word section *b* as follows:

(*b*) To use any installation of this kind established by them before the war on the territory of a neutral State *for purely military purposes and closed to public service.*

¹ Annex 34.

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NEUTRAL PERSONS IN THE TERRITORY OF THE BELLIGERENT PARTIES

Annex 36

PROPOSITION OF THE GERMAN DELEGATION

*Draft of a new section to be added to the Regulations of 1899 respecting the laws
and customs of war on land.*

SECTION V.—THE TREATMENT OF NEUTRAL PERSONS IN THE TERRITORY OF THE BELLIGERENT PARTIES

CHAPTER 1.—*Definition of a neutral person*

ARTICLE 61

All the *ressortissants* of a State which is not taking part in the war are considered as neutral persons.

ARTICLE 62

A violation of neutrality involves loss of character as a neutral person with respect to both belligerents. There is a violation of neutrality:

(a) If the neutral person commits hostile acts against one of the belligerent parties;

(b) If he commits acts in favor of one of the belligerent parties, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2).

ARTICLE 63

The following acts shall not be considered as committed in favor of one of the belligerent parties in the sense of Article 62, letter b:

(a) Supplies furnished or loans made to one of the belligerent parties, so far as these supplies or loans do not come from enemy territory or territory occupied by the enemy.

(b) Services rendered in matters of police or civil administration.

CHAPTER II.—*Services rendered by neutral persons*

ARTICLE 64

Belligerent parties shall not ask neutral persons to render them war services, even though voluntary.

[269] The following shall be considered as war services: Any assistance by a neutral person in the armed forces of one of the belligerent parties, in the character of combatant or adviser, and, so far as he is placed under the laws, regulations or orders in effect by the said armed force, of other classes also, for example, secretary, workman, cook. Services of an ecclesiastical and sanitary character are excepted.

ARTICLE 65

Neutral Powers are bound to prohibit their *ressortissants* from engaging to perform military service in the armed force of either of the belligerent parties

ARTICLE 66

Neutral persons moreover shall not be required, against their will, to lend services, not considered war services, to the armed force of either of the belligerent parties

It will be permitted, nevertheless, to require of them sanitary services or sanitary police services, not connected with actual hostilities. Such services shall be paid for in cash, so far as it is possible to do so. If cash is not paid, requisition receipts shall be given.

CHAPTER III.—*Property of neutral persons*

ARTICLE 67

No war tax shall be levied on neutral persons.

A war tax is deemed to be any requisition levied expressly for a war purpose.

Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes

ARTICLE 68

Neutral property shall not be destroyed, damaged or impaired unless necessary by reason of the exigencies of war. In this case, the belligerent party is only obliged to pay an indemnity in its own country or in the enemy country, when the *ressortissants* of another neutral country or of its own nationals likewise enjoy indemnification and reciprocity is guaranteed.

ARTICLE 69

The belligerent parties shall make compensation for the use of neutral real property, in the enemy country, the same as in its own country, provided that reciprocity is guaranteed in the neutral State. In no case, however, shall this indemnity exceed that provided by the legislation of the enemy country in case of war

ARTICLE 70

Belligerent parties are authorized to expropriate or use for any military purpose, through immediate payment therefor in specie, all neutral movable property found in their country.

[270] They may do the same in enemy country, within the limits and under the conditions specified in Article 52.

ARTICLE 71

Neutral vessels and their cargoes can be expropriated or used by a belligerent party only if these vessels are used for river navigation within its territory or within the enemy territory.

In case of expropriation the indemnity shall equal the entire valuation of the vessel or of the cargo plus ten per cent. In case of use, it shall equal the ordinary charges plus 10 per cent. These indemnities shall be paid immediately and in specie.

ARTICLE 72

Indemnity for the destruction or injury of neutral personal property, due solely to its use for military purposes, shall likewise be settled in conformity with the principles laid down in Articles 70 and 71.

Annex 37

PROPOSITION OF THE AUSTRO-HUNGARIAN DELEGATION

*Amendments to the proposition of the German delegation*¹

ARTICLE 64

The last sentence of the second paragraph might be worded as follows:

Services of a religious or sanitary nature are excepted, and those which pertain to the domain of the sanitary police, as well as all services rendered by neutrals in the interest of internal order.

ARTICLE 65

Insert between the words "bound" and "to" in the first line: "immediately upon notification of the existence of a state of war."

ARTICLE 71

Insert between the words "navigation" and "within" in the fifth line of the first paragraph: "or small coasting trade."

[271]

Annex 38

PROPOSITION OF THE SWISS DELEGATION

*Amendments to the proposition of the German delegation*²

ARTICLE 62

Article to be worded as follows:

A neutral person *can no longer avail himself of his neutrality and of the special privileges resulting therefrom according to the terms of Articles 64-72:*

- (a) If he commits hostile acts against a belligerent party;
- (b) If he commits acts in favor of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2).

In such a case, the neutral person shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality, than a "ressortissant" of the other belligerent State could be for the same act.

¹ Annex 36.

² *Ibid.*

ARTICLE 65

Eliminate the article.

ARTICLE 66

Rewrite the second paragraph as follows:

It will be permitted nevertheless to require of them sanitary services or sanitary police services not connected with actual hostilities if *imperatively demanded by the circumstances*. Such services shall be paid for in cash so far as possible. If cash is not paid, requisition receipts shall be given.

ARTICLE 68

Rewrite the article as follows:

Property of a neutral person shall not be destroyed, damaged or impaired unless necessary by reason of the exigencies of war. *In such a case the belligerent party is held to complete indemnification of the owner.*

Annex 39

PROPOSITION OF THE LUXEBURG DELEGATION

*Amendment to the proposition of the German delegation*¹

ARTICLE 70

Add a paragraph 2 as follows:

This authorization does not extend to means of public transportation leading from neutral States and belonging to said States or to their grantees, recognizable as such.

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Annex 40

SUBSIDIARY PROPOSITION OF THE LUXEBURG DELEGATION

*Amendment to the proposition of the German delegation*¹

ARTICLE 70

Add:

The maintenance of pacific relations, especially of commercial and industrial relations, existing between the inhabitants of belligerent and neutral States, merits particular protection on the part of the civil and military authorities.

¹ Annex 36.

On the outbreak of hostilities, belligerents shall accord a sufficient delay to enable transportation material belonging to neutral States or to their grantees to be taken back to their country of origin.

Requisitions on means of transportation belonging to neutral States or to their grantees shall not be made except in case of imperative necessity.

The quantity of material to be requisitioned, as well as its use, shall be reduced to a minimum. Such material shall be returned within a short time to its country of origin.

Whenever public transportation material belonging to a neutral State or to its grantees is requisitioned by a belligerent State, material belonging to the latter or to its grantees found in neutral territory may likewise be held there by way of due compensation.

Annex 41

PROPOSITION OF THE SERBIAN DELEGATION

*Amendment to the subsidiary proposition of the Luxemburg delegation*¹

ARTICLE 70

Add to the end of the last paragraph:

A neutral State is required, however, to exercise this detention of transportation material at the same time and in the same measure with respect to all belligerent parties.

Annex 42

PROPOSITION OF THE NETHERLAND DELEGATION

*Amendment to the proposition of the German delegation*²

ARTICLE 64

After the first paragraph add another, as follows:

Not to be included under this rule are: *ressortissants* of a neutral State who, at the time of the outbreak of war, are found in the ranks of the army of a belligerent under the terms of a previous voluntary enlistment.

¹ Annex 40.

² Annex 36.

SYNOPTIC TABLE

of Propositions presented to the Committee of Examination relating to the Draft of a New Section to be added to the Regulations respecting the laws and customs of war on land.

SECTION V

Treatment of Neutral Persons in the Territory of Belligerent Parties.

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GERMAN PROPOSITION

Annex 36

CHAPTER I

Definition of a neutral person

ARTICLE 61

All the *ressortissants* of a State which is not taking part in the war are considered as neutral persons.

ARTICLE 62

A violation of neutrality involves loss of character as a neutral person with respect to both belligerents. There is a violation of neutrality:

(a) If the neutral person commits hostile acts against one of the belligerent parties;

(b) If he commits acts in favor of one of the belligerent parties, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2).

ARTICLE 63

The following acts shall not be considered as committed in favor of one of the belligerent parties in the sense of Article 62, letter b:

(a) Supplies furnished or loans made to one of the belligerent parties, so far as these supplies or loans do not come from enemy terri-

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AUSTRO-HUNGARIAN PROPOSITION

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Annex 38

ARTICLE 62

A neutral person can no longer avail himself of his neutrality and of the special privileges resulting therefrom according to the terms of Articles 64-72:

(a) If he commits hostile acts against a belligerent party;

(b) If he commits acts in favor of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2).

In such a case, the neutral person shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality, than a "ressortissant" of the other belligerent State could be for the same act.

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LUXEMBURG PROPOSITION

Annexes 39 and 40

V

SERBIAN PROPOSITION

Annex 41

VI

NETHERLAND PROPOSITION

Annex 42

I

GERMAN PROPOSITION

Annex 36

tory or territory occupied by the enemy.

(b) Services rendered in matters of police or civil administration.

CHAPTER II

Services rendered by neutral persons

ARTICLE 64

Belligerent parties shall not ask neutral persons to render them war services, even though voluntary.

[276] The following shall be considered as war services: Any assistance by a neutral person in the armed forces of one of the belligerent parties, in character of combatant or adviser, and, so far as he is placed under the laws, regulations or orders in effect by the said armed force, of other classes also, for example, secretary, servant, cook. Services of an ecclesiastical and sanitary character are excepted.

ARTICLE 65

Neutral Powers are bound to prohibit their *ressortissants* from engaging to perform military service in the armed force of either of the belligerent parties.

ARTICLE 66

Neutral persons moreover shall not be required, against their will, to lend services, not considered war services, to the armed forces of either of the belligerent parties.

II

AUSTRO-HUNGARIAN PROPOSITION

Annex 37

ARTICLE 64

The last sentence of the second paragraph might be worded as follows:

Services of a religious or sanitary nature are excepted, and those which pertain to the domain of the sanitary police, as well as all services rendered by neutrals in the interest of internal order.

ARTICLE 65

Insert between the words "bound" and "to" in the first line: "immediately upon notification of the existence of a state of war."

III

SWISS PROPOSITION

Annex 38

ARTICLE 65

Eliminate Article 65.

ARTICLE 66

Rewrite the second paragraph as follows:

It will be permitted nevertheless to require of them sanitary services or sanitary police services not connected with actual

IV
LUXEMBURG PROPOSITION
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V
SERBIAN PROPOSITION
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VI
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Annex 42

ARTICLE 64

After the first paragraph
add another, as follows:

Not to be included
under this rule are:
ressortissants of a neu-
tral State who, at the
time of the outbreak of
war, are found in the
ranks of the army of a
belligerent under the
terms of a previous
voluntary enlistment.

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GERMAN PROPOSITION

Annex 36

It will be permitted, nevertheless, to require of them sanitary services or sanitary police services, not connected with actual hostilities. Such services shall be paid for in cash, so far as it is possible to do so. If cash is not paid, requisition receipts shall be given.

CHAPTER III

Property of neutral persons

ARTICLE 67

No war tax shall be levied on neutral persons. A war tax is deemed to be any requisition levied expressly for a war purpose.

Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.

[278] ARTICLE 68

Neutral property shall not be destroyed, damaged or impaired unless necessary by reason of the exigencies of war. In this case, the belligerent party is only obliged to pay an indemnity in its own country or in the enemy country, when the *ressortissants* of another neutral country or its own nationals likewise enjoy indemnification and reciprocity is guaranteed.

ARTICLE 69

The belligerent parties shall make compensation for the use of neutral real property, in the enemy

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Annex 38

hostilities *if imperatively demanded by the circumstances*. Such services shall be paid for in cash so far as possible. If cash is not paid, requisitioned receipts shall be given.

ARTICLE 68

Rewrite the article as follows:

Property of a neutral person shall not be destroyed, damaged or impaired unless necessary by reason of the exigencies of war. *In such a case the belligerent party is held to complete indemnification of the owner.*

IV	V	VI
LUXEMBURG PROPOSITION	SERBIAN PROPOSITION	NETHERLAND PROPOSITION
<i>Annexes 39 and 40</i>	<i>Annex 41</i>	<i>Annex 42</i>

I

GERMAN PROPOSITION

Annex 36

country, the same as in their own country, provided that reciprocity is guaranteed in the neutral State. In no case, however, shall this indemnity exceed that provided by the legislation of the enemy country in case of war.

ARTICLE 70

Belligerent parties are authorized to expropriate or use for any military purpose, through immediate payment therefor in specie, all neutral movable property found in its country.

They may do the same in enemy country, within the limits and under the conditions specified in Article 52

II

AUSTRO-HUNGARIAN
PROPOSITION*Annex 37*

III

SWISS PROPOSITION

Annex 38

IV

LUXEMBURG PROPOSITION

Annexes 39 and 40

ARTICLE 70

Add a paragraph 2, as follows:

This authorization does not extend to means of public transportation leading from neutral States and belonging to said States or to their grantees, recognizable as such.

or, as a subsidiary proposal:

The maintenance of pacific relations, especially of commercial and industrial relations, existing between the inhabitants of belligerent and neutral States, merits particular protection on the part of the civil and military authorities.

On the outbreak of hostilities, belligerents shall accord a sufficient delay to enable transportation material belonging to neutral States or to their grantees to be taken back to their country of origin.

Requisitions on means of transportation belonging to neutral States or to their grantees shall not be made except in case of imperative necessity.

The quantity of material to be requisitioned,

V

SERBIAN PROPOSITION

Annex 41

ARTICLE 70

Add to the end of the last paragraph of the subsidiary proposal of Luxembourg:

A neutral State is required, however, to exercise this detention of transportation material at the same time and in the same measure with respect to all belligerent parties.

VI

NETHERLAND PROPOSITION

Annex 42

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I

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AUSTRO-HUNGARIAN
PROPOSITION*Annex 37*

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ARTICLE 71

Neutral vessels and their cargoes can be expropriated or used by a belligerent party only if these vessels are used for river navigation within its territory or within the enemy territory.

In case of expropriation the indemnity shall equal the entire valuation of the vessel or of the cargo plus ten per cent. In case of use, it shall equal the ordinary charges plus ten per cent. These indemnities shall be paid immediately and in specie.

ARTICLE 72

Indemnity for the destruction or injury of neutral personal property, due solely to its use for military purposes, shall likewise be settled in conformity with the principles laid down in Articles 70 and 71.

ARTICLE 71

Insert between the words "navigation" and "within" in the fifth line of the first paragraph; "or small coasting trade."

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Annexes 39 and 40

as well as its use, shall be reduced to a minimum. Such material shall be returned within a short time to its country of origin.

Whenever public transportation material belonging to a neutral State or to its grantees is requisitioned by a belligerent State, material belonging to the latter or to its grantees found in neutral territory may likewise be held there by way of due compensation.

V
SERBIAN PROPOSITION

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Annex 44

DRAFT OF A NEW SECTION TO BE ADDED TO THE REGULATIONS
RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

SECTION V.—NEUTRALS IN THE TERRITORY OF THE BELLIGERENT PARTIES

CHAPTER I.—*Definition of a neutral*

ARTICLE 61

All the *ressortissants* of a State which is not taking part in the war shall be considered as neutrals.

ARTICLE 62

A neutral cannot longer avail himself of his neutrality and of the special privileges resulting therefrom according to the terms of Articles 64-72:

(a) If he commits hostile acts against a belligerent party;

(b) If he commits acts in favor of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality than a *ressortissant* of the other belligerent State could be for the same act.

ARTICLE 63

The following acts shall not be considered as committed in favor of one of the belligerent parties in the sense of Article 62, letter *b*:

(a) Supplies furnished or loans made to one of the belligerent parties, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from one of these territories;

(b) Services rendered in matters of police or civil administration.

CHAPTER II.—*Services rendered by neutrals*

ARTICLE 64

Belligerent parties shall not require of neutrals services directly connected with the war.

[283] Exception is made of sanitary services or sanitary police service absolutely demanded by the circumstances. These services shall, as far as possible, be paid for in cash; if not, a receipt shall be given and payment effected as soon as possible.

ARTICLE 65

The provision of Article 64, paragraph 1, does not apply to persons belonging to the army of a belligerent State through voluntary enlistment.

CHAPTER III.—*The property of neutrals*

ARTICLE 66

No war tax shall be levied upon neutrals.

A war tax is deemed to be any tax levied expressly for war purposes.

Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.

ARTICLE 67

The property of neutrals shall not be destroyed, damaged, or seized, unless absolutely necessary by reason of the exigencies of the war. In case of destruction or damage, the belligerent is only bound to pay an indemnity in its own country or in the enemy country, when the *ressortissants* of another neutral country or of its own are likewise given the benefit of an indemnity and reciprocity is guaranteed.

ARTICLE 68

The belligerent parties shall make compensation for the use of real property belonging to neutrals in the enemy country, the same as in its own country, provided that reciprocity is guaranteed in the neutral State. Nevertheless, this indemnity shall in no case exceed that which the legislation of the enemy country provides in case of war.

ARTICLE 69

Movable property belonging to a neutral in the territory of a belligerent party can be expropriated or made use of by it for a military purpose only by an immediate payment of an indemnity in specie.

ARTICLE 70

Railway material belonging to neutral States or to companies or to private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to its country of origin.

A neutral State may likewise, in case of necessity, retain and utilize to an equal extent material of the belligerent Power found on its territory.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

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ARTICLE 71

Neutral vessels and their cargo can be expropriated or utilized by a belligerent party if they belong to the river shipping in its territory or in the enemy's territory. Exception is made of the vessels in a regular maritime service.

In case of expropriation the indemnity shall be equal to the full value of the vessel or cargo, increased by 10 per cent. These indemnities shall be paid immediately and in specie.

ARTICLE 72

When movable property belonging to neutrals and utilized under the provisions of Articles 69 and 71 shall have suffered, by the sole reason of their use for a military purpose, any damage in excess of ordinary wear and tear, the belligerent party shall pay for this damage a special indemnity over and above what is due for utilizing them.

The total indemnity for these goods destroyed under the same conditions shall be the same as that which would have been paid for the expropriation.

Annex 45

PROPOSITION OF THE DELEGATION OF GREAT BRITAIN

*Amendment to the draft elaborated by the committee of examination*¹

ARTICLE 65

After the words "of a belligerent State" insert the words "either in virtue of the legislation of that State, or."

Annex 46

PROPOSITION OF THE DELEGATION OF BELGIUM

*Amendment to the draft elaborated by the committee of examination*²

ARTICLE 65

The provision of the first paragraph of the preceding article is not applicable to persons belonging to the army of a belligerent State by the fact of a voluntary engagement, nor to those who have been incorporated in it by virtue of the legislation of that State and who do not prove any particular nationality or have not satisfied the obligations imposed by the recruiting laws in their countries.

¹ Annex 44.

² *Ibid.*

[285]

Annex 47**PROPOSITION OF THE FRENCH DELEGATION***Amendments to the draft elaborated by the committee of examination*¹**SECTION V.—NEUTRALS IN THE TERRITORY OF THE BELLIGERENT PARTIES**

Replace Chapter III of the draft of the committee by the following:

CHAPTER III.—*The property of neutrals***ARTICLE 66**

The property of neutrals shall be dealt with by each belligerent :

1. On its own territory, like the private property of its nationals ;
2. On hostile territory, like the private property of the *ressortissants* of the hostile State

ARTICLE 67

(Like Article 70 of the committee's draft.)

ARTICLE 68

Neutral vessels and their cargo may be requisitioned and used on the same conditions as railway material.

ARTICLE 69

The indemnity to be paid to neutrals for destruction, requisition, damage or use shall, as far as possible, be paid in cash ; if not so paid, the amounts due shall be stated in receipts and their payment shall be effected as soon as possible.

¹ Annex 44.

THIRD COMMISSION

[289]

FIRST MEETING

JUNE 24, 1907

His Excellency Count Tornielli presiding.

The meeting opened at 3:15 o'clock.

The President makes the following address:

GENTLEMEN: Your acceptance of the choice that has been made of me to preside over the Third Commission of the Conference is a very great honor, which I greatly appreciate, although I can only attribute it to considerations quite foreign to my person. You have evidently wished to remember that the country I represent was the cradle of the science of international law, and that through the liberal tendencies of their juridical spirit the Italians still hold to-day a place in the vanguard of the progress of this science, as well as of its practical application. You remember that the country which through its *jus gentium* has recognized the existence of a common law, an expression of what is in the general conscience of peoples, is the same one that after having written into these laws the most liberal principles of maritime law during war has not shrunk from accepting, in its most recent conventions on international arbitration, the broadest and the boldest formulas.

I am not unaware that the qualifications of directing our work that are possessed by the majority of you are much superior to mine. It is for your aid and especially for your indulgence that I make appeal. But I shall not further dwell on this thought as it is enough to have thus stated it with sincerity.

From the moment that it devolves upon me to preside over the Third Commission, I suppose that I am authorized to say to you that we should first proceed as soon as possible with the organization of the work, in order that, thanks to the lively desire of coming to an agreement which animates us, and which is indispensable to the successful outcome of our work of diplomacy, it may speedily attain the practical results that are expected of us.

The program that we are called upon to study contains two groups of [290] questions. One group deals with the use of means of destruction in the special operations of maritime war. The Russian program communicated to our respective nations in March/April and accepted by them, invites us to work out the convention concerning some of these matters. The dominant principle in them was laid down by the Conference of 1899. Article 22 of the Regulations respecting the laws and customs of war on land, annexed to the Convention of July 29,¹ is worded thus: "The right of belligerents to adopt means of injuring the enemy is not unlimited." We are concerned with the application of this humanitarian rule ratified joyfully by the public opinion of all the nations in cases of bombardment by naval forces and in the placing of torpedoes, etc.

¹ *Ante*, Second Commission, annex 1.

These questions evidently go together, and they could be referred for examination to a first subcommission.

The other questions forming the object of our study have also several points of contact. In the program that was distributed at the second meeting of the Conference they were worded as follows: "Regulations governing belligerent vessels in neutral ports," and "additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864, revised in 1906." If you share my opinion the questions involved in these two points of the program could be examined by a second subcommission.

This division of the work between the two subcommissions will not prevent us from referring the most important motions, if need be, for examination to special committees when you deem it advisable.

For the organization of our work we have a written set of rules; for the cases not provided for therein I think that we could adopt the procedure laid down by the Conference of 1899.

Here two questions of internal regulation arise, and I must beg you to settle them at once. One of these questions concerns the time when the designation of the reporter should be made. The other concerns the steps to be taken to establish a sufficient record of the meetings of the plenary Commission and of the subcommissions.

On the first of these two questions, at the Conference of 1899, there were two different opinions. It seemed to some that the reporter should be designated only after the discussions were sufficiently advanced to let it be seen what resolutions would be adopted, but because of considerations which derive their force from the special character of a diplomatic assembly, in which the formation of a majority is neither to be sought nor expected, the contrary opinion prevailed in the Commissions whose competence extended to the questions having the greatest analogy with those now before us. I, therefore, propose to you to name our reporter without delay.

On the second point, concerning records of our meetings, the Conference of 1899 has bequeathed to us the method to be followed. Then the secretariat established two records, one as complete as possible, and the other an analysis. The first was not printed but was kept at the disposal of the members of the Commission and had no authentic and formal character. It preserved for the discussion the free and intimate character that is most fitted for the aims sought by a diplomatic assembly. But, in order that the motions be duly recorded in an authentic document, it was decided that the secretariat should also prepare a summary record, summing up the essential part of the work. The analyti-

[291] cal minutes intended for printing were distributed to the members of the Commission, but they kept their character as a secret document throughout the duration of the Conference.

We are bound, gentlemen, to preserve the secrecy of our discussions and deliberations.

Any recommendation from me on this subject would not add to the conscience that each one of you has of his duty. Mine urges me to try to bring to a good end the work that we are undertaking. You know that no useful result can be obtained except by reconcilable views and harmony of opinion. Publicity of our debates might in many cases destroy the agreement desired. Relations

with the press do not concern us directly. This is for the Bureau of the Conference to settle, acting for the Commissions as a whole.

With these points once established, we can proceed to the immediate constitution of our two subcommissions. Consequently, I ask the delegates to enroll themselves on one or the other list, or on both, as they wish.

I beg the secretaries to circulate two lists, in order that the delegates may keep their seats, for after this enrollment we are going to resume the work of organizing the Commission and the subcommissions.

After this enrollment was finished the **PRESIDENT** proceeded:

The regulations provided in Article 3 for the appointment of the secretaries and the reporter of the Commission. The functions of the secretaries chosen among the delegates are not defined by the regulations. They consist naturally in assisting me in the regular development of our work. It is, therefore, beyond question that the appointment of the secretaries should take place at once.¹

In conforming to the precedents established in 1899, may I submit for your approval the choice of Rear Admiral **SIEGEL**, delegate of Germany, for secretary of the Commission, and Mr. **LOUIS RENAULT**, plenipotentiary delegate of France, for reporter.

Both took a distinguished part in the preparation of the last Convention of Geneva, as we all know, and they bring hither a perfect knowledge not only of the texts but also of the spirit of that recent international agreement. These qualifications select them for our votes.

By this happy choice we complete the bureau of the Commission.

I shall now propose to the delegates enrolled in the second subcommission, that is to say, the one that is to deal with the rules governing belligerent vessels in neutral ports and with the adaptation to maritime war of the principles of the Geneva Convention, that they be good enough to allow this bureau to act at the same time for the plenary Commission and for the second subcommission.

It remains to constitute the bureau of the first subcommission. Will you permit me to recommend to you for the presidency of this subcommission the very distinguished plenipotentiary delegate of Norway, his Excellency Mr. **FRANCIS HAGERUP**?

The appointment of Mr. **GEORGIOS STREIT**, plenipotentiary delegate of Greece, as reporter likewise recommends itself. The members of the first subcommission would be assured by these choices of the effective aid of the representatives of two countries whose interests in maritime commerce are among the most important. Finally, for the duties of secretary of the first subcommission I permit myself to name to you his Excellency Mr. **VAN DEN HEUVEL**, whose eminent qualities will assure the perfect fulfillment of the laborious task placed upon him.

[292] All these proposals were accepted.

With a view to facilitate the work the **PRESIDENT** asks that the proposals or declarations that may be made be submitted to the Commission as soon as possible.

His Excellency General **Porter** files a proposal concerning the bombardment by a naval force of towns that are unfortified, etc., etc.²

Mr. **Kriege** files a proposal containing an amendment of the provisions to

¹ See vol. i, p. 58 [61].

² Annex i.

the Convention of July 29, 1899, for the adaption to maritime war of the principles of the Geneva Convention of August 22, 1864.¹

His Excellency Sir **Ernest Satow** announces that the British delegation will file a proposal concerning the placing of automatic submarine contact mines² and reserves the right to file a project relating to the use of automobile torpedoes.

His Excellency Mr. **Lou Tseng-tsiang** then reads in the name of his Government the following declaration:

I have the honor to inform this high assembly that China accepts without reserve the sign of the Red Cross as emblem of the Geneva Convention of 1864.

In making this communication the Government of Peking desires me to add:

At the time of the signature by the Representative of China at London of the act of adhesion to the Geneva Convention of 1864 it was stated that the sign of the Red Cross was more than once used in the temporary formations of the sanitary service in China, and the historical explication of this heraldic sign furnished by the Conference of revision of 1906 and communicated by its first delegate to our Conference only strengthened the broadmindedness which determined the Imperial Government to adopt it tacitly with a purpose of maintaining the unity of this emblem and facilitating its recognition in all nations and all their armies.

His Excellency **Turkhan Pasha** declares that the Ottoman delegation reserves the right to state in the subcommission the reasons why it must keep the Red Crescent on its hospital ships, hospitals, ambulances, etc.

The **President** takes note of the filing of both proposals and declarations.

The meeting adjourned at 4:20 o'clock.

¹ Annexes 38 and 39.

² Annex 9.

SECOND MEETING

JULY 16, 1907

His Excellency Count Tornielli presiding.

The meeting opened at 10:30 o'clock.

The minutes of the first meeting were approved.

The **President** explains the procedure adopted to accelerate the examination of the report elaborated by Mr. LOUIS RENAULT and the draft convention annexed thereto.¹

He believed that in order to gain time he could summon the Third Commission in a plenary meeting although, in strict procedure, it belonged to the second subcommission to declare itself first on the report and on the convention.

The **PRESIDENT** thinks that it is not necessary to have a reading of the report² distributed Saturday, which all the delegates have consequently been able to acquaint themselves with. (*Assent.*)

It is proper nevertheless to ask whether anyone desires to offer any remarks.

As no one asks for the floor, the **PRESIDENT** begins the reading of the articles of the new convention.³

Articles 1 and 2, which are only a reproduction pure and simple of the first two articles of the 1899 Convention, are approved.

The **President** then reads Article 3.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed in the service of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case before they are employed.

[294] The **Reporter** offers some observations on the subject of the text proposed by the committee of examination. He permits himself to abandon for a moment his official position as reporter in order to call up again as a French delegate the objections he had already expressed against the proposed innovation.

We are dealing in the new Article 3 with neutral hospital boats that place themselves in the service of a belligerent. Is there need of completely assimilating these vessels to neutral ambulances by adopting for these vessels a provision

¹ Annexes A and B to this day's minutes.

² Annex A to this day's minutes.

³ Annex B to this day's minutes. Amendments to the Hague Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of April 22, 1864. See also vol. i, pp. 63-82 [66-85].

analogous to that of the 1906 Convention for war on land,¹ or on the other hand is it necessary to preserve the provision written in the Convention of 1899? The majority of the committee of examination declared itself for the former solution.

It is proper to remark first that the majority of the committee, while expressing itself in favor of the analogy between neutral hospital ships and ambulances, nevertheless did not make the assimilation complete.

Neutral ambulances, indeed, have to fly only two flags, that of the belligerent under whom they have placed themselves and that of the Red Cross; whilst, according to the provision proposed for hospital ships, the latter would have to fly three flags, their national flag, the flag of the belligerent under whom they have placed themselves, and the flag of the Red Cross.

But there is here not only a question of flag: the neutral hospital ship must enter into the hospital service of the belligerent, which seems excessive. The analogy on this point is indeed more apparent than real between maritime war and war on land. A neutral ambulance, in the nature of things, is and should be incorporated in the hospital service of one of the belligerents, for it necessarily works within the lines of one of them; this situation is not necessarily that of a neutral hospital ship that plies its work on the high seas and for the most part of the time with entire freedom of action. In 1899 the question was thoroughly discussed and the committee of examination, a majority of whom were sailors, did not hesitate to adopt with unanimity the rule set forth in Article 3 and so consider as sufficient the right of control granted to belligerents by Article 4.

Finally, a last consideration, and the most important, is that the requirement contained in Article 3 proposed by the committee of examination is of a nature to discourage the good-will of neutrals. Indeed it may be that a neutral hospital ship may wish to preserve its independence within the limits fixed by Article 4 of the 1899 Convention. The case may be presented where a vessel of that kind would desire to bring equal aid to the two belligerents, if for example it belongs to a neutral country that is near the theater of operations. It is going counter to its sentiments to oblige it to place itself in the service of one of the belligerents when it would desire to carry assistance to both parties conformably to the charitable spirit of the Geneva Conventions.

Such are the considerations that Mr. LOUIS RENAULT desired the Commission to consider in support of his motion that Article 3 as proposed by the majority of the committee of examination be rejected.

Rear Admiral Siegel desires to show precisely what were the military reasons that have caused the German proposal² relative to the obligation resting on neutral hospital vessels to put themselves under the authority of one of the belligerents. He thinks that he should in consequence read the following declaration: "When the text of the 1899 Convention was drawn up I myself combated the idea that neutral hospital vessels should be obliged to declare themselves for either of the belligerents. At that time this measure seemed to me superfluous and even harmful. I believed with my colleagues that the provisions of [295] Article 4 and those of the last paragraph of Article 5 would be sufficient to override all difficulties and prevent any disorder.

The German delegation now proposes an amendment to Articles 3 and 5 in order to regulate in a more effective manner the conduct of neutral hospital ves-

¹ Annex C to this day's minutes.

² Annex 39.

sels, which enjoy too great independence in the theater of war and over which it seems necessary to exercise a more extensive control.

Although we have no experience in this matter more complete than in 1899, we have, after mature reflection, come to believe that belligerents will be less inconvenienced by neutral hospital vessels and that there will be a greater guaranty against possible abuses if the belligerents exercise a greater authority over hospital vessels than that which was conferred upon them by Article 4. The acceptance of this authority does not create a very different state of affairs for hospital boats from what now exists according to the provisions of the aforesaid article. Indeed, our request carries no other obligation for neutral hospital ships than that of choosing the Power to which they wish to be attached. They will thus do spontaneously an act which the belligerent may compel them to do.

This dependence has also the great advantage that the Power which assumes authority over a hospital ship also assumes entire responsibility with regard to it at the same time that it watches over and controls its acts. I cannot believe that the measure that we propose is too harsh or that it is of a nature to divert any ship whatsoever from its humanitarian intentions for the sole reason that it will be obliged to place itself under the authority of a belligerent which besides will protect it in case of necessity: without this dependence special protection would be lacking for a hospital vessel.

If our proposal can in the least restrict the independence of neutral hospital boats, as I do not think it can, it is on the other hand certain that it offers great interest with respect to good order and the necessities of war. We cannot know in advance the number of hospital ships that will go to the place where the belligerents are assembling. Would it be practical to permit these vessels, which perhaps arrive in considerable number and at different times, to move freely over the waters where operations are going on without being subject to an effective control or placed under some protecting direction. Would it not be simpler, in order to avoid the misunderstanding always to be dreaded, especially if the ships were near the coast, to oblige neutral hospital ships to range themselves from the time of their arrival under the authority of one of the belligerents who would thenceforth direct them as he saw fit?

On the other hand it is necessary not to lose sight of the fact that conditions are no longer what they were formerly.

Two new provisions just now introduced into the Convention, have modified this state of things and it is necessary to take them into account:

1. We have recognized the necessity of permitting neutral hospital ships to arm their personnel in order to put them in a position to maintain necessary order and to defend when needful the sick and wounded.
2. We have admitted the possibility of a wireless telegraphy installation on board hospital ships.

These two concessions were necessary to put the vessels in a position to respond to the services asked of them but they have for a corollary the establishment of a control that will foresee and prevent any abuses. Although it may be of the highest importance for a hospital ship to be able to make use of wireless telegraphy, which has become an indispensable means for modern [296] navigation, no commander in chief will authorize the presence of such a ship if it is to be feared that the apparatus will be used in an indiscreet

and dangerous manner. Likewise, there must be a guaranty that the arms permitted on hospital ships will only be used for legitimate defense.

For all these reasons I am convinced that neutral hospital ships should be subject to a superior authority controlling them, protecting them and having responsibility for them. Neutral hospital ships can easily answer this requirement by placing themselves under the direction of one of the belligerents. The external side of this act would be the flag of the Power with which they are connected, a flag which moreover will in no way displace their national flag.

The last-mentioned flag will float in its ordinary place whilst the flag of the belligerents will be flown from the mainmast at the same time as the Red Cross of Geneva.

Such are the reasons that have decided the German delegation to propose to you the amendments to Articles 3 and 5, which we beg you to accept as the committee of examination has already done.

The discussion of Article 3 appearing to be at an end, the President defines the point on which the vote is to be taken. It is on Article 3 as proposed by the committee of examination.

His Excellency Mr. van den Heuvel proposes a modification of the text. It appears to him that the proposal of the German delegation proceeds from a thought that every neutral hospital ship should be put under the control of one of the belligerents for the sake of good order and security; the words "placed in the service" can be understood in a rather strict sense and go beyond the idea that has inspired the proposal. We might substitute for them another expression such as "put under the authority or the control of one of the belligerents."

Rear Admiral Siegel declares that he does not oppose this modification of the text and that he accepts the words "placed under the control."

The President consequently reads Article 3 modified in this sense, which is then put to vote and approved by 19 votes to 11.

He then reads Article 4 which is approved without modification.¹

Article 5 is then read.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent in whose service they are placed.

Hospital ships which, in the terms of Article 4, are detained by the enemy, must take down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must take the necessary measures to render their special painting sufficiently plain.

[297] The Reporter indicates that paragraphs 1, 2 and 3 of this Article are a reproduction pure and simple of the corresponding paragraphs of Article

¹ Annex B to this day's minutes.

3 of the 1899 Convention; as to paragraph 4 the modification therein is the consequence of the adoption of the new Article 3; the words "in whose service they are placed" will naturally be replaced by "under whose control they are placed."

With respect to paragraph 5, the **REPORTER** proposes to substitute the phrase "haul down" which is a technical term, for the phrase "take down" the flag; no objection is made to this change. In paragraph 6 he also proposes a little addition suggested by Admiral **ARAGO** and accepted by the German delegation; this addition consists in inserting after the clause "to which they are entitled" the words "subject to the assent of the belligerent which accompanies them."

The **President** reads Article 5 modified in conformity with the above proposals and asks whether anybody desires to make remarks on Article 5 as a whole before proceeding to the vote.

Rear Admiral **Arago** asks if it is well understood that the small boats mentioned in paragraph 3 are of course those which act as appendages of large ones; otherwise these little boats might be subject to the obligation stated in Article 3.

The **Reporter** indicates that there is no difficulty on this point; it is evident that these little boats are considered as appendages of large ones. Besides, this can be mentioned in the report to be presented to the Conference.

His Excellency **Turkhan Pasha** reads the following declaration:

I must first thank his Excellency the first delegate of Germany for having declared that his Government saw no obstacle in the way of recognizing the hospital flag of the Ottoman Government the same as that of the Red Cross.

The declaration that I made in the name of the Ottoman delegation having been inserted in the minutes of the meeting of July 2, I do not need to read it again.

The Imperial Ottoman Government has respected the inviolability of the flag of the Red Cross from the beginning and does not to-day ask more than reciprocity for its hospital ships.

The Imperial delegation, considering that we are now concerned with completing the 1899 Convention relating to maritime warfare, a convention that the Ottoman Government has signed, thought it could express its desire to see a clause concerning the Red Crescent inserted in the new regulations that it will be asked to sign. It never had in view the 1864 Convention, whose revision is naturally beyond the competence of the Conference.

In giving its adhesion to the Geneva Convention on July 4, 1865, the Imperial Government, like the other Powers, rendered homage to Switzerland by recognizing as the hospital flag an inversion of the Federal colors. It was only when the impossibility of using it for its own hospitals was apparent that it had to adopt the red crescent on a white ground, a sign that it has used for more than thirty years, and which has been recognized and respected in time of war.

If, after the explanations that I have just furnished, the Commission still believes that it cannot take into consideration our request relative to the insertion of a special clause in the regulations that the Conference is about to draw [298] up, I shall not insist upon it, but we have the firm hope that the Commission which has already taken note of the declaration made by the Ottoman delegation on July 2 will indeed recognize that the considerations which prompt the attitude of the Imperial Government in this question are well based and will come to a decision in consequence.

His Excellency **Mr. Tcharykow** then reads the following declaration:

The delegation of Russia has the honor to declare that it supports the wish for reciprocity expressed by the first Ottoman delegate in the meeting of July 2 and in the declaration that we have just listened to.

We think that the wish expressed by the representative of the Ottoman Government to extend to maritime operations the principles, in conformity with the institutions of Geneva, which the Turkish Government has applied for more than thirty years in war on land, is legitimate in itself and deserves a sympathetic reception.

We can testify that during the campaign of 1877-78 the Red Cross and the Red Crescent protected together with complete reciprocity the work of charity and mercy that they both symbolized. And the delegation of Russia is pleased to hope that it will be stated that this Commission takes due note of the reserve contained in the declaration of the Ottoman Government.

His Excellency **Samad Khan Momtas-es-Saltaneh** then speaks as follows in the name of the delegation of Persia:

Since the question comes again under discussion I shall permit myself to supply an omission. It has been remarked to me that in my declaration concerning distinctive signs I should have also recognized the inviolability of the Red Cross for foreign hospital ships. I take advantage of the occasion to give this satisfaction to our colleagues of Switzerland. Believing herself perfectly free, after the reservation she made to Article 18 of the Geneva Convention, to employ the flag of the Lion and Red Sun as a distinctive sign of its hospital ships, Persia recognizes reciprocally and formally the inviolability of foreign hospital ships covered by the Red Cross. I therefore am voting for or against the motions that we have before us, be it always understood, with the same reservation on the part of my Government.

His Excellency **Mr. Carlin** offers the following remarks:

With reference to the declarations that have just been made and in accordance with the instructions of its Government, the delegation of Switzerland makes the following observation:

The Swiss Federal Council, in view of the fact that the Geneva Convention of 1906 is not in question and could not be discussed in the present Conference, takes note of the fact that the reservations formulated in this body by the Ottoman and Persian delegations cannot have any bearing other than on maritime war and leave intact the question of the emblem just as it was regulated by the Conventions of 1864 and 1906 for war on land.

His Excellency **Samad Khan Momtas-es-Saltaneh** remarks that in 1906 he signed with the same reservation that he is renewing to-day.

The **President** sums up the declarations that have just been made in the following terms:

Gentlemen, you have just heard the statement by which his Excellency the first delegate of the Ottoman Empire has maintained the declaration which he had filed almost at the beginning of the meeting of our second subcommission on July 2. He has confirmed its substance, for then as well as now his Excellency **TURKHAN PASHA** has expressed a hope to see accepted by the Conference the insertion in the Convention of a special clause recognizing the Red Crescent as a distinctive sign of inviolability for the hospital ships of the Ottoman Empire.

The first delegate of Persia has reminded us on this point of the reservations

made by him in the name of his Government with respect to Article 18 of the Geneva Convention of 1906 at the moment of signing that international act, and he has brought to us here the declaration that his Government will respect the flag of the Red Cross at sea in reciprocity for the recognition by the other Powers of the Persian hospital flag.

In the name of the delegation of Switzerland his Excellency Mr. CARLIN has remarked that the declarations of the Ottoman and Persian delegations can only bear on maritime warfare and could not affect in the least the Conventions of 1864 and 1906. He reserved the right, moreover, if necessary, to define anew the attitude of his Government on this point.

In the same meeting his Excellency the first delegate of Germany, while expressing the opinion that his Government saw no obstacle in the way of recognizing the hospital flag of the Ottoman Empire in proper cases, has pointed out to us the difficulty that the insertion of such a clause would occasion by reason of the modification that it would be necessary to introduce into earlier conventions.

As to myself I agree with the opinion of his Excellency Baron MARSCHALL VON BIEBERSTEIN, the more willingly because I know that my own Government would on its part see no obstacle to the recognition in proper cases of the hospital flag of the Ottoman Empire.

But at the same time I think that we must really take into account the fact that the present Conference has in its program the adaptation to maritime warfare of the principles of the Geneva Conventions and not the revision of the provisions contained in those Conventions. It follows in my opinion that whatever may be the views to-day of the Powers represented here on the fundamental question, that the Commission would exceed the limits of the program outlined for it if it entered upon a discussion of what was decided at Geneva.

Of the reservations contained in the declarations of the Ottoman and Persian delegations note has already been taken and the minutes of the meeting of July 2 and those of to-day have them on record.

It remains for me to state that the principle of reciprocal recognition of the distinctive flags of hospital ships requested by the two delegations has been accepted by the delegations of Germany, Italy and Russia and has elicited no opposition.

Article 5, with the changes of form that were made, is approved.

Article 6 is read and adopted without discussion.¹

The President reads the new Article 7.

ARTICLE 7 (*new*)

In the case of a fight on board a war-ship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for

[300] The Reporter explains that this article is the application to war on sea of the principles contained in Articles 6 and 15 of the 1906 Convention.

¹ Annex B of this day's minutes.

Here reference can be meant only to combat on board ship, very rare to-day in maritime war; the provision explains itself.

Article 7 is approved.

ARTICLE 8 (*new*)

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

On the subject of Article 8 the **Reporter** points out that this article is the adaptation pure and simple of the Geneva Convention of 1906 to war on sea with the exception of the last part of paragraph 2 concerning the presence on board of a wireless telegraphy installation. This amendment proposed by the delegation of the Netherlands¹ was approved by the committee of examination.

The **Reporter**, referring to paragraph 5 of Article 4 relating to the commissioner whom belligerents can put on board a hospital ship, examines the case where a neutral hospital ship having on board a commissioner of one of the belligerents meets a war vessel of the other belligerent.

Can this commissioner be made prisoner? He thinks that the Commission is in agreement for the negative. Since the armed personnel placed on board hospital ships cannot be made prisoners all the more reason for not making prisoner of the commissioner whose duty it is to watch over and direct the personnel. It will nevertheless be well that this remark be inserted in the report presented to the Conference.

The **President** asks the Commission if it is wise to allow a radio telegraphic installation on board a hospital ship. These apparatuses can receive communications not addressed to the hospital ship. Their presence is consequently of a nature to beget suspicions with regard to the ships in question.

The **PRESIDENT** therefore begs the Commission to express itself on the advisability of keeping in Article 8 (*new*) the terms: "and the presence of wireless telegraphy apparatus on board."

His Excellency Vice Admiral Jonkheer **Röell** explains that if a commander of a fleet fears the inconveniences of wireless installation on board a hospital ship he may either have the transmitting apparatus removed or have the aerial wires cut.

The **Reporter** observes that if Article 8 is voted in the text proposed by the committee of examination it will be necessary to insert in the report² to the Conference the observations made by Admiral **RÖELL** with regard to the power of belligerents to remove apparatus of radio telegraphy on board a hospital ship.

He adds that it would be of interest if the technical delegates would kindly furnish the Commission with some information of a nature to make clear to it the use of such apparatus and the inconvenience that might follow from the point of view of belligerents.

[301] Rear Admiral **Arago** explains that the transmitting apparatus is more complicated and more difficult to use than the receiving apparatus. He thinks with Admiral **RÖELL** that the belligerent will always have power to remove

¹ Annex 40.

² See the report to the Conference, vol. i, p. 67 [70].

the aerial wires or even the whole transmitting installation but, as the employment of such apparatus is so widespread as to have become an absolute necessity for navigation, if the Commission suppresses the use of such apparatus on hospital ships it would, in his opinion, probably regret it later.

Captain **Ottley**, in the name of the British delegation, observes that the inconveniences which will result from the presence of radio telegraphy on board a hospital ship may be very serious while the advantages from a humanitarian point of view will be of slight importance. In view of the importance of the question he begs the president to submit it to a vote.

Rear Admiral **Arago** remarks that the commissioner who may be put by belligerents on hospital ships might serviceably exercise control over the use made of the radio telegraphic apparatus.

The **President** is of the opinion that after this exchange of views it would be well to divide the vote on Article 8 into two parts.

The first part, which includes paragraphs 1 and 2 up to the clause relating to the radio telegraphic apparatus, can be considered as approved as it has aroused no comment.

The vote on the last half of paragraph 2 results as follows: 23 for maintaining the text as proposed by the committee of examination; 8 against; and 12 abstentions.

The **President** then passes to Article 9 which is read:

ARTICLE 9

Belligerents may appeal to the charity of the commanders of neutral merchant ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board.

The **Reporter** suggests that this text is like that presented by the committee of examination, but after reflection several of the members of the committee were of the opinion that it would be well for it to undergo some changes in conformity with the considerations set forth in the report on the motion of Colonel OVTCHINNIKOW: "It is a question of an appeal addressed to a merchantman by a belligerent vessel needing its absolute and immediate assistance. By reason of this circumstance it is to the interest of the war vessel to ignore the infractions that the merchantman may have committed previously and to promise it, for example, not to exercise the right of search with respect to it.

We consequently propose to add after the words "for having such persons on board" the following "*but, apart from special undertakings that have been made to them, they remain liable to the consequences of violations of neutrality they may have committed.*"

The **President** asks whether after having heard the explanations of the **REPORTER** no one wishes the floor on the subject of the addition that has just been proposed.

[302] Colonel **Ovtchinnikow** expresses the hope that the Commission will adopt this change.

His Excellency Sir **Ernest Satow** observes, in the name of the British delegation, that it would be best to keep the more precise and restrictive term of "capture" used by the 1899 Convention instead of "consequences."

After an exchange of views between the **President**, the **Reporter**, and his Excellency Sir **Ernest Satow**, it is agreed to put the word "capture" back.

Article 9 is then put to vote and adopted with this final addition "but, apart from special undertakings that have been made to them, they remain liable to capture for any violations of neutrality they may have committed."

The **President** then reads Article 10 which is approved without any change.¹

Article 11 is then read.

ARTICLE 11

Sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies, to whatever nation they belong, shall be respected and tended by the captors.

With regard to Article 11 the **Reporter**, on a remark made to him by the delegation of the Netherlands, proposes that this article shall read in the following manner: "Sailors and soldiers on board, as well as other persons officially attached to fleets or armies, when *sick or wounded*, to whatever nation they belong shall be respected and tended by the captors."

The article thus modified by changing the place of the words "sick or wounded" is approved.

ARTICLE 12 (*new*)

Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.

His Excellency Sir **Ernest Satow** repeats the reservations that he has already presented in the subcommission on Article 12. Subject to this reservation Article 12 is approved.

Articles 13 and 14 are approved without discussion.²

The **President** reads Article 15.

ARTICLE 15

The shipwrecked, wounded, or sick who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and internment shall be borne by the State to which the shipwrecked, sick, or wounded belong

His Excellency Mr. **Hammar skjöld** presents the following observations on the subject of this article:

I am not unaware that the proposed Article 15 is like the old Article 10 which however was not ratified and consequently does not enjoy the authority of the articles in force.

[303] But I would remark that Article 13 also has reference to the obligation of neutrals with regard to measures to be taken to prevent the shipwrecked, etc., from again taking part in the war: nevertheless, the expressions used in Articles 13 and 15 are not identical.

Article 13 says that "measures must be taken that they do not again take

¹ Annex B to this day's minutes.

² *Ibid*

part in the operations of the war." Whilst, according to Article 15, the shipwrecked, etc., must "be guarded by the neutral State so as to prevent their again taking part in the operations of the war," which is much more positive.

The difference between the expressions might cause one to believe there is a difference in principle which would perhaps not be justified. I ask if it would not be wise to bring the two wordings together. In any case the obligation of neutrals, even according to Article 15, cannot be absolute. Evidently it will be impossible to completely prevent escapes.

The **Reporter** answers that the difference in wording of the two articles is explained by the difference in the situations. The commander of a neutral war vessel which has taken on board wounded or sick cannot *guard* the individuals taken on board; it is otherwise with local authorities in neutral countries dealing with disembarked persons. Of course all that can be asked of the authority of the neutral country is that it shall not be negligent; whatever responsibility it incurs presupposes, as is well understood, a fault on its part.

His Excellency Mr. **A. Beernaert** says that this provision was in its place in the 1899 Convention because at that time there was no question up of the rights and duties of neutrals, but that as this subject is on the program of the present Conference the Article 10 under discussion would perhaps be better placed in the agreement to be reached on the rights and duties of neutrals under study by the Second Commission.

The **Reporter** makes the objection that the results of the deliberations of the other Commission cannot be foreseen; besides, it seems useful to keep the rule that was formerly adopted in the Convention in preparation as the Convention should be sufficient in itself. This Convention will thus be a complete body of precise instructions for naval commanders.

His Excellency Mr. **A. Beernaert** agrees with this view.

His Excellency **Turkhan Pasha** then refers to the reservation made by his Government in 1899 on the unratified Article 10, and he renews it for Article 15 while awaiting new instructions.

The **President** then reads Articles 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 which are approved without discussion.¹

ARTICLE 25 (*new*)

The present Convention, duly ratified, shall replace as between contracting States, the Convention of July 29, 1899

The Convention of 1899 remains in force as between the Parties which signed it but which do not also ratify the present Convention.

With regard to Article 25 Chevalier **von Weil**, delegate of Austria-Hungary, asks and obtains the substitution of the expression "contracting Powers" for the expression "contracting States"

[304] All the articles of the text proposed by the committee of examination having been approved, the **President** takes the floor and speaks as follows:

Gentlemen, we have just finished our work on one of the four topics assigned to the Third Commission. We can congratulate ourselves, for we are easily the first to lay before the Conference a complete organic project in which all the rules of the Conventions of Geneva for the amelioration of the condition

¹ Annex B to this day's minutes.

of the sick and wounded that can be applied to maritime warfare have been given a place.

It is due to the marvelous genius for hard work of our eminent reporter, Mr. LOUIS RENAULT, and to the fertile activity of your second subcommission that this satisfying result has been obtained. You have not allowed yourselves either to be halted by the relative dryness of the subject or discouraged by the facile criticism that designated us as organizers of war.

We recall, gentlemen, that very often have our colleagues whose special task is to keep before us the technical and practical side of military questions had occasion to point out to us that by our regulation we had created impediments to the conduct of naval operations. This argument has not always affected us. We had above all an anxiety to assure a real improvement in the condition of the victims of maritime warfare; if it happens now that as a consequence of the principles that we have confirmed and the rules that we have defined the means of injuring each other are somewhat fettered, we can rejoice thereat, for we have not been convoked at The Hague to facilitate war, but gradually to dispel its horrors.

We have not been successful in reconciling the divergent opinions on all points; but we can hope that the differences that exist are not important enough to cause the failure of our work in its last stage.

The reporter has already said with his customary clearness, and I will myself dwell on this point, that in any case the new Convention does not bring to an end the binding force of the Convention of July 29, 1899. We have constantly had the text thereof under our eyes, and we have not affected it in any way. It, therefore, survives in all its plenitude for the States that have signed and ratified it. If some of these States hesitated to give their signature or their ratification to the Convention that we have just proposed, these States would continue to remain bound with regard to the other signatories of the 1899 Convention by the clauses of that international act which has not been denounced. (*Loud applause.*)

The President then indicates the order of the work of the second subcommission which is still to deal with "the rules adaptable to belligerent vessels in neutral ports." The subcommission has before it four proposals: one from Japan,¹ one from Spain,² one from Great Britain,³ and one from Russia.⁴ He proposes to convene the bureau of the subcommission together with four delegates designated by the four above-named delegations to draw up a *questionnaire*. The PRESIDENT says that he will communicate the day upon which this committee may meet.

His Excellency Mr. TSUDZUKI, first delegate of Japan and Captain CHACÓN, naval delegate of Spain, are made members of this committee.

The delegations of Russia and of Great Britain postpone naming their representatives.

The meeting adjourned at 12:45 o'clock.

¹ Annex 46.

² Annex 47.

³ Annex 44.

⁴ Annex 48.

[305]

Annex A

AMENDMENTS TO THE HAGUE CONVENTION OF JULY 29, 1899,
FOR THE ADAPTATION TO MARITIME WARFARE OF THE
PRINCIPLES OF THE GENEVA CONVENTION OF AUGUST 22,
1864REPORT TO THE COMMISSION¹

In proceeding to render an account of the work assigned us of preparing a text to serve as a basis for your deliberations, it seemed wise to make a few observations of a general nature before outlining our reasons in support of each of the propositions which we shall have the honor of submitting to you.

In 1899 the Conference was naturally inspired with the fundamental principles of the Convention of 1864, which were regarded as the starting-point for the regulations to be laid down for naval warfare, and endeavored to formulate rules in harmony with these principles which would render it possible to secure at sea the humanitarian results already secured on land. An agreement was easily reached in the Conference, and it may be serviceable to recall the fact that the committee of examination which had worked out the draft and had been unanimous in its support was for the most part made up of naval officers.

We now have before us the new Geneva Convention of July 6, 1906, destined to replace the Convention of August 22, 1864. As it has been signed by the representatives of more than thirty States and has already been ratified by eleven of them, the question has naturally arisen whether it would not be well to take advantage of the new Convention to complete the work of 1899.² Not that the Convention of 1906 has modified that of 1864 in its essential features; the fundamental principles remain the same; its purpose was not to undertake anything new but merely to combine the results of experience and study, to fill in the gaps, and to clear away obscurity. We are now in the same situation with respect to the Convention of 1899. We do not believe that there is need of any essential change; the only thing to be done is to ascertain whether in the light of the Convention of 1906, there is not some need of *completing* the Convention of 1899, while remaining constant to the spirit that created it.

A great debt of gratitude is due the German delegation for the conscientious work which it has performed for the purpose of adapting to the Convention of 1899, the extensions and additions made to the Convention of 1864.³

[306] Our labor has thereby been much lessened. We shall merely have to discover what differences in some particulars may exist between naval and

¹ This report was made by a committee of examination presided over by his Excellency Count TORNIELLI, president of the Third Commission, and comprising delegates from Germany (Rear Admiral SIEGEL, assisted by Mr. GÖPFERT), Austria-Hungary (Rear Admiral HAUS), Belgium (his Excellency Mr. VAN DEN HEUVEL), China (Colonel TING), France (Mr. LOUIS RENAULT, *reporter*), Great Britain (Commander OTTLEY), Italy (Commander CASTIGLIA), Japan (Rear Admiral HAYAO SHIMAMURA), the Netherlands (his Excellency Vice Admiral RÖELL), Russia (Colonel OVTCHINNIKOW), and Switzerland (his Excellency Mr. CARLIN).

² Annex 38.

³ Annex 39.

land warfare to prevent us from applying one and the same solution to both cases. Sometimes analogies are more apparent than real.

The proposals of the French delegation¹ have likewise in view the *completion* rather than the *modification* of the Convention of 1899 by providing for cases not dealt with in the latter. Certain of the amendments proposed by the delegation of the Netherlands,² on the contrary, seem calculated to modify the principles of the 1899 Convention.

The Commission had first to decide the preliminary question whether the Convention of 1899 should be continued with amendments or whether a new Convention should be drawn up combining the provisions retained and the new ones adopted. The latter course was unhesitatingly decided upon. The supplementary texts are rather long and deal with matters too distinct to be inserted in the existing Convention without great practical difficulty. In a matter of this kind, where rules to cover difficult situations are to be laid down, the text adopted should be clear, precise and easy to consult.

The Convention of 1899 comprises fourteen articles; the project³ which we submit to you has twenty-six. The difference should not cause dismay, nor should it be feared that any very great changes have been made in the work of 1899, for it conserves its own features unaltered by the proposed additions, and these cannot give rise to any serious difficulty.

Obviously, the title of the Convention must be changed, and the substitution of the date "July 6, 1906," for "August 22, 1864," suffices.

Articles 1 and 2, relating to military hospital ships and to the hospital ships of belligerents, are Articles 1 and 2 of the Convention of 1899 retained without change.

Article 3, on the contrary, modifies Article 3 of the Convention of 1899. The majority of the Commission has in fact adopted an amendment proposed by the German delegation and suggested by Article 11 of the Convention of 1906. To understand the difficulty arising here we must compare the case contemplated by the latter Convention with the analogous case occurring in naval warfare.

When a relief society of a neutral country wishes to come to the aid of one of the belligerents in land warfare, subject to what conditions may it do so? Such a society must first obtain the consent of the Government of its own country, and then the consent of the belligerent which it wishes to help and under whose direction it must place itself. It will temporarily form a part of the sanitary service of the belligerent, as is shown by the obligation imposed by Article 22, paragraph 1 [1906], to fly the national flag of this belligerent beside the flag of the Red Cross.

In 1899, when the question arose as to the status of hospital ships of neutral countries disposed to lend their charitable aid, there was no precedent to follow, as the Convention of 1864 had not provided for the case of neutral ambulances. Until the Convention of 1906 it was a disputed question whether such ambulances could fly their national flag or whether they should fly that of the belligerent. In this connection the committee in 1899 expressed its view as follows: "There was some thought of requiring neutral hospital ships to place themselves under

the direct authority of one or other of the belligerents, but careful study [307] has convinced us that this would lead to serious difficulties. What flag

¹ Annexes 41 and 42.

² Annex 40.

³ Annex B to these proceedings.

would these ships fly? Would it not be somewhat inconsistent with the concept of neutrality for a ship with an official commission to be incorporated in the navy of one of the belligerents? It seemed to us sufficient to have these vessels, which are primarily under the control of the Government from which they have received their commissions, subjected to the authority of the belligerents to the extent provided in Article 4."

Certain members of the Commission believe that these reasons have retained all their force. They feel that the text of Article 11 of the Convention of 1906 is not sufficient to invalidate them. A neutral ambulance wishing to assist in the hospital service of a belligerent must by the very nature of the circumstances be incorporated in that service; it is hard to imagine its being free from control within the lines of the belligerent who must be responsible to his adversary for its acts and who should consequently have authority over it. The case seems to be different for a neutral hospital ship, as it operates on the open sea where it enjoys an independence of action which an ambulance cannot possess. It is further said that a neutral hospital ship may intend to help one belligerent no more than the other, but may proceed to the vicinity of the naval operations ready to assist both parties, and that this presents no inconvenience because belligerents have means at their disposal to prevent any abuses that might accompany the charitable assistance.

This reasoning did not convince the majority of the Commission, which voted in favor of modifying Article 3, so as to bring it into accord with Article 11 of the Convention of 1906. Military considerations, it is said, require this provision, in that if independent action were allowed the neutral hospital ships, a way would be open to serious abuses which Article 4 does not contemplate and could not check.

This is the reason why the Commission proposes a modification of Article 3, to conform to the Convention of 1906. This Article 3 refers solely to the obligation for the neutral hospital ship to place itself at the service (hospital service, of course) of one of the belligerents. Paragraph 4 of the new Article 5 makes the logical application of this provision respecting the flag to be flown by the neutral ship so employed. It is worth while to note that the text there is not, whatever may be said, in perfect harmony with Article 11 of the Convention of 1906, in accordance with which a neutral ambulance displays *two flags*—that of the Geneva Convention and that of the belligerent—for the new paragraph of the fifth article provides that the ship shall carry *three flags*—the flag of the Geneva Convention, its own national flag, and besides, the flag of the belligerent displayed at the mainmast. We know of no precedent to this effect.

Article 4 is not changed. It seems to have provided the belligerents with sufficient powers to prevent abuses.

Article 5 is retained for the most part. Its purpose is to indicate how hospital ships shall make themselves recognizable.

A modification of the fourth paragraph and the addition of two new paragraphs are to be noted.

The modification has been explained above in connection with the status created by the draft for neutral hospital ships. If the plan adopted by the Commission be not retained by the Conference, it will be necessary to return to the text of the Convention of 1899.

The new paragraph 5 is intended to apply the provision of Article 21, para-

graph 2, of the Convention of 1906, to the matter of which we treat. That provision reads as follows: "Sanitary formations *which have fallen into* [308] *the power of the enemy* shall fly no other flag than that of the Red Cross so long as they continue in that situation." The situation is not identical in the case of a hospital ship, which would not, it seems, *fall into the power of the enemy* in the same way as an ambulance, which, in point of fact, is within the lines of the enemy and more or less liable to be confused with his own organization. The provision was intended to apply to the case of ships *detained* under the terms of Article 4, paragraph 5, and the wording of the German amendment was accordingly slightly changed. The rule found in Article 5, paragraph 5, *new*, has a very wide application and comprises all cases. If the hospital ship of a belligerent is detained by the adversary, it hauls down its national flag and only retains the flag of the Red Cross. In the case of a neutral hospital ship it hauls down the flag of the belligerent into whose service it entered but not its own national flag.

The other new paragraph, the sixth, regulates the distinctive marks to be used to make the hospital ships recognizable at night. The German delegation proposes the following provision: "As a distinguishing mark, all hospital ships shall carry during the night three lights—green, white, green—placed vertically, one above the other, and at least three meters apart." It was objected that this provision seemed imperative in character, whereas a hospital ship accompanying a squadron cannot be required to reveal its presence to the enemy. It should be free to do so or not, subject to the risk of being attacked if its character is not apparent. It was further objected that other ships might make an improper use of the lights in order to effect their escape. The committee adopted a text which meets these objections: it is incumbent upon the ships which wish to ensure by night the freedom from interference to which they are entitled, to take the necessary measures to secure their recognition: in other words, they must see to it that their special painting, as indicated in paragraphs 1 to 3 of the same article, shows distinctly. This seems to be possible and does not allow the abuses to which lights might give rise.

The new Article 6 is based upon Article 23 of the Convention of 1906. It can give rise to no difficulty.

Article 7, which is new, provides for a situation analogous to that covered by Articles 6 and 15 of the Convention of 1906, but rarer nowadays, at least, in naval warfare than in war on land. A slight misunderstanding arose with regard to the amendment of the German delegation, which read: "*During the fight* the sick wards on board the war vessel shall be respected and spared as far as possible." Since only fights at a distance were thought of, these being by far the more frequent, naturally it was hard to understand how during such fights the sick wards could be respected. But the provision refers to a fight on board, which makes it perfectly comprehensible. A slight modification in the phrasing of the amendment sufficed to dispel this obscurity.

Article 8 is new.

The principle laid down in the first paragraph is borrowed from Article 7 of the Convention of 1906, and is self-evident.

The second paragraph is drawn from Article 8 of the Convention of 1906, but it has not seemed necessary to reproduce all the provisions of that article. The staffs of the hospital ships and the sick wards of men-of-war may be armed.

either for maintaining order on board or for protecting the sick and wounded. This fact is not a sufficient reason for withdrawing protection, as long as the arms are used only for the purposes indicated.

The German delegation had provided for the case in which "the hospital ship is armed with pieces of light ordnance to guard against the dangers of [309] navigation, and more particularly as a protection against any act of piracy." A discussion took place in the committee in regard to the ordnance which a hospital ship might carry, and the opinion which finally prevailed was that arming the ship is by no means necessary. Merchant ships are not armed and do not run greater risks. Of course, it would be permissible to have a cannon on board for the purpose of signaling.

The delegation of the Netherlands had proposed to offer explanations on the subject of wireless telegraphy apparatus on board. After discussion, the majority of the Commission felt that the presence of such an outfit was not in itself a sufficient ground for withdrawing protection. A hospital ship may have to communicate with its own squadron or with land in order to carry out its mission. It is not every use of radio-telegraphic apparatus but only certain uses which may be considered illicit, and it is well to recall here Article 4, paragraph 2, by which the Governments undertake not to use hospital ships for any military purpose. The execution of such a provision, like many others, depends upon the good faith of the belligerents.

Article 9 is, as a whole, new, although it contains the substance of Article 6 of the Convention of 1899.

According to paragraph 1 belligerents may appeal to the charity of neutral merchant ships to take on board and tend the wounded or sick. This provision is based upon Article 5 of the Convention of 1906; it is specified that the assistance of the neutral ships is entirely voluntary, and the text of the German amendment ("belligerents may *ask*") was altered to avoid ambiguity.

Paragraph 2 regulates the status of vessels which respond to this appeal, and also those which have of their own accord rescued wounded, sick, or shipwrecked men. (The position of the individuals found on board will be examined further on.) It is said that these vessels *shall enjoy special protection and certain immunities*. These expressions, borrowed from the Convention of 1906 (Article 5), have been criticized for their undeniable vagueness. It is hardly possible to proceed otherwise, as everything depends upon circumstances. A war-ship may appeal to a ship perhaps far off, promising, for example, not to search it. It is evident that the advantages of the immunities do not hold the place here that they do on land, where the inhabitants to whom an appeal is made are exposed to a series of rigorous measures on the part of the invader or occupant. Above all, it is a question of good faith. A belligerent should keep to the promise which he has made in order to obtain a service, and the neutral ought not to be enabled by a show of zeal to escape the risk to which his conduct may have rendered him liable. It is, however, certain, on the one hand, that the vessels in question may not be captured for carrying the shipwrecked, wounded, or sick of a belligerent, and, on the other hand, as is expressly stated by Article 6 of the Convention of 1899, that they are liable to capture for any violation of neutrality they may have committed (contraband of war, blockade running).

Article 10 reproduces Article 7 of the Convention of 1899, with one unimpor-

tant modification intended to harmonize the provisions relating to land and naval war as regards the pay of the members of the hospital staff temporarily detained by the enemy.¹ It is needless to add that, in naval as well as in land warfare, the official personnel only is concerned, the personnel of a relief society not being entitled to receive pay.

[310] Article 11 corresponds to Article 8 of the Convention of 1899, which it completes to harmonize with Article 1, paragraph 1, of the Geneva Convention.

Article 12 is new; it corresponds to an amendment presented by the German delegation (see the last paragraph under Article 6), but makes the provision general. We do not think that the rule is new; if the formula is not written into the Convention of 1899, the spirit of that Convention is clear. It is an important point upon which there should be no uncertainty.

When a belligerent cruiser meets with a military hospital boat, a hospital ship or a merchant ship, it has the right, either by virtue of Article 4 of the Convention or by virtue of the common law of nations, to visit them whatever their nationality. If it finds shipwrecked, wounded, or sick men on board it has the right to have them delivered up to it, because they are its prisoners, as stated in Article 9 of the Convention of 1899, which is reproduced in Article 14 of our draft. We have here but the application of a general principle, by virtue of which the combatants of a belligerent who fall into the hands of the adversary thereby become its prisoners. Obviously, it will not always be to the interest of the belligerent to make use of this right. Often it will be to his advantage to leave the wounded or sick where they are and not to take charge of them. But, in some cases, it will be indispensable not to allow wounded or sick to go free who are still in condition to render great services to their country; this is easily seen in regard to shipwrecked men who are in good health. It has been said that it would be inhuman to compel a neutral vessel to hand over the wounded whom it had charitably picked up. To overcome this objection, it is only necessary to consider what would be the situation were there no convention. The positive law of nations would permit not only the capture of the combatants found on board a neutral vessel, but even the seizure and confiscation of the vessel as having rendered *unneutral* service. Moreover, if shipwrecked men, for example, were permitted to escape captivity by the mere fact of their having been taken on board a neutral vessel, the belligerents would disregard the philanthropic action of the neutrals the moment such action might result in causing them irreparable injury. Humanity would not gain by this.

It is well to add that Article 12 of the draft shows by limitation what a belligerent cruiser may do in regard to neutral merchantmen; it cannot divert them from their course or compel them to proceed on a certain route. Article 4 of the Convention of 1899, preserved by this draft, gives such a right only as against vessels specially devoted to hospital service, which must bear the consequences attendant upon the particular rôle assigned them. Nothing of the kind could be imposed upon such merchant vessels as may occasionally be willing to aid in a charitable work. There can be no argument against Article 9 of the 1899 Convention, which we propose to retain as Article 14, because this article does not relate to vessels, but only treats of the sick and wounded.

Article 13, proposed by the French delegation, is new; it fills a gap in the

¹ Cf. Article 13 of the Convention of 1906.

Convention of 1899 and can cause no difficulty.¹ This case arose during the recent war, and was decided, after some hesitation, in accordance with the idea in our draft. The sick, wounded, or shipwrecked picked up by a neutral war-ship are in exactly the same situation as that of combatants who take refuge in neutral territory. They are not handed over to their enemy, but they must be detained.

[311] Article 14 simply reproduces Article 9 of the Convention. Certain amendments proposed by the German delegation and the delegation of the Netherlands were withdrawn by reason of the restoration of Article 10 of the Convention.

The scope of Article 14 has been determined by the considerations expressed above in regard to Article 12; it has to do only with the disposition of individuals, not of vessels, which are provided for elsewhere.

Article 15 is merely a reproduction of Article 10 of the Convention, which, for special reasons having nothing to do with the principle of the article, had not been ratified. Its restoration was agreed to, upon the proposal of the French delegation,² without any difficulty. The case contemplated was where war vessels disembark wounded or sick in a neutral port and thus gain liberty of action. There might be some question whether the neutral does not lend assistance inconsistent with neutrality, and might not be held responsible to the other belligerent. The proposed solution, however, seemed to take sufficient account of the respective interests.

If a neutral merchant vessel which has casually picked up wounded or sick, or even shipwrecked men, arrives in a neutral port without having met a cruiser and without having entered into any agreement, the individuals which it disembarks do not come under the provision; they are free.

Article 16 is new; it is borrowed from the Convention of 1906 (Article 3). It has been thought strange that the words "burial" and "cremation" were kept, as, naturally, they will not often be applicable in the case of naval operations. But it must be remembered that an engagement may take place near the coast and that the provision applies to the individuals who may be on land.

Article 17 is new. It corresponds to Article 4 of the Convention of 1906.

Article 18 is the same as Article 11 of the Convention of 1899.

Article 19 is new and corresponds to Article 25 of the Convention of 1906.

Article 20, which is new, and corresponds to Article 26 of the Convention of 1906, we consider very important. The best of rules becomes a dead letter if steps are not taken in advance to bring it to the knowledge of those who will have to apply them. Especially will the personnel on board hospital ships often be called upon to perform some very delicate mission. They must be convinced of the necessity of not taking advantage of the immunities they enjoy in order to commit belligerent acts; this would ruin the Convention and all the humanitarian work of the two Peace Conferences.

Article 21 is new. It corresponds to Articles 27 and 28 of the Convention of 1906, and has given rise to no difficulty.

Article 22 is new. It presents no difficulties. In the case of military operations taking place at the same time on land and sea, the new Convention must

¹ Annex 41.

² Annex 42.

be applied to the forces afloat, and the Convention of 1906 to the forces operating on land.

Article 23 is a reproduction of Article 12 of the Convention of 1899.

Article 24 is a reproduction of Article 13 of the Convention of 1899, changing only the date of the Geneva Convention.

Article 25 is new, and corresponds to Article 31 of the Convention of 1906.

[312] The Convention based on the draft we submit to you is to supersede the Convention of 1899 as between those Powers which shall have signed and ratified it. Where two Powers are parties to the Convention of 1899, and only one of them a party to the new Convention, the Convention of 1899 will necessarily continue to govern their relations.

Article 26 is a reproduction of Article 14 of the Convention of 1899.

Such is the project which we submit for your approval. It is a modest work, in which we have been guided by our predecessors of 1899 and 1906. We nevertheless consider it very useful, and we think that the enactment of the project into a diplomatic convention would constitute an important step in the direction of the codification of the law of nations.

[313]

Annex B

TEXT OF THE HAGUE CONVENTION OF JULY 29, 1899, FOR THE ADAPTATION TO MARITIME WARFARE OF THE PRINCIPLES OF THE GENEVA CONVENTION OF AUGUST 22, 1864

TEXT PROPOSED BY THE COMMISSION OF EXAMINATION

DRAFT CONVENTION FOR THE ADAPTATION TO MARITIME WARFARE OF THE PRINCIPLES OF THE GENEVA CONVENTION OF JULY 6, 1906

(Text proposed to the Conference by the Third Commission)

ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

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These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

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<i>Text of the Convention of July 29, 1899</i>	<i>Text proposed by the Com- mittee of Examination</i>	<i>Text proposed to the Confer- ence by the Third Commission</i>
<p>vided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.</p>	<p>vided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.</p>	<p>vided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.</p>
<p>[314] ARTICLE 3</p>	<p>ARTICLE 3</p>	<p>ARTICLE 3</p>
<p>Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to whom they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.</p>	<p>Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed in the service of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case before they are employed.</p>	<p>Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case before they are employed.</p>
<p>ARTICLE 4</p>	<p>ARTICLE 4</p>	<p>ARTICLE 4</p>
<p>The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.</p>	<p>The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.</p>	<p>The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.</p>
<p>The Governments undertake not to use these ships for any military purpose.</p>	<p>The Governments undertake not to use these ships for any military purpose.</p>	<p>The Governments undertake not to use these ships for any military purpose.</p>
<p>These ships must in nowise hamper the movements of the combatants.</p>	<p>These ships must in nowise hamper the movements of the combatants.</p>	<p>These ships must in nowise hamper the movements of the combatants.</p>
<p>During and after an engagement they will act at their own risk and peril.</p>	<p>During and after an engagement they will act at their own risk and peril.</p>	<p>During and after an engagement they will act at their own risk and peril.</p>
<p>The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if</p>	<p>The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if</p>	<p>The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if</p>

*Text of the Convention of
July 29, 1899**Text proposed by the Com-
mittee of Examination**Text proposed to the Confer-
ence by the Third Commission*

important circumstances re-
quire it.

As far as possible the bel-
ligerents shall enter in the log
of the hospital ships the orders
which they give them.

ARTICLE 5

Military hospital ships shall
be distinguished by being
painted white outside
[315] with a horizontal band
of green about a meter
and a half in breadth.

The ships mentioned in Ar-
ticles 2 and 3 shall be dis-
tinguished by being painted
white outside with a horizontal
band of red about a meter and
a half in breadth.

The boats of the ships above
mentioned, as also small craft
which may be used for hospital
work, shall be distinguished by
similar painting.

All hospital ships shall make
themselves known by hoisting,
with their national flag, the
white flag with a red cross pro-
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tion, and further, if they
belong to a neutral State, by
flying at the mainmast the na-
tional flag of the belligerent in
whose service they are placed.

Hospital ships which, in the
terms of Article 4, are detained
by the enemy, must take down
the national flag of the bellig-
erent to whom they belong.

The ships and boats above
mentioned which wish to en-
sure by night the freedom
from interference to which
they are entitled, must take the
necessary measures to render
their special painting suffi-
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long to a neutral State, by
flying at the mainmast the na-
tional flag of the belligerent
under whose control they are
placed.

Hospital ships which, in the
terms of Article 4, are de-
tained by the enemy, must haul
down the national flag of the
belligerent to whom they be-
long.

The ships and boats above
mentioned which wish to en-
sure by night the freedom from
interference to which they are
entitled, must, subject to the
assent of the belligerent they
are accompanying, take the
necessary measures to render
their special painting suffi-
ciently plain.

*Text of the Convention of
July 29, 1899*

*Text proposed by the Com-
mittee of Examination*

*Text proposed to the Confer-
ence by the Third Commission*

ARTICLE 6 (*new*)

The distinguishing signs referred to in Article 5 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ARTICLE 7 (*new*)

In the case of a fight on board a war-ship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ARTICLE 8 (*new*)

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

ARTICLE 6 (*new*)

The distinguishing signs referred to in Article 5 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ARTICLE 7 (*new*)

In the case of a fight on board a war-ship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

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*Text of the Convention
of July 29, 1864**Text proposed by the Com-
mittee of Examination**Text proposed to the Confer-
ence by the Third Commission*

ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE 9

Belligerents may appeal to the charity of the commanders of neutral merchant ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board.

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Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board, but, apart from special undertakings that have been made to them, they remain liable to capture for any violations of neutrality they may have committed.

ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

ARTICLE 10

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the same allowances and pay which are given to the staff of corresponding rank in their own navy.

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The belligerents must guarantee to the said staff when it has fallen into their hands the same allowances and pay which are given to the staff of corresponding rank in their own navy.

[317] ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong,

ARTICLE 11

Sailors and soldiers on board, when sick or wounded, as well as other persons offi-

ARTICLE 11

Sailors and soldiers on board, as well as other persons officially attached to fleets

<i>Text of the Convention of July 29, 1899</i>	<i>Text proposed by the Com- mittee of Examination</i>	<i>Text proposed to the Confer- ence by the Third Commission</i>
shall be protected and tended by the captors.	cially attached to fleets or armies, to whatever nation they belong, shall be respected and tended by the captors.	or armies, when sick or wounded, to whatever nation they belong, shall be respected and tended by the captors.
	ARTICLE 12 (<i>new</i>)	ARTICLE 12 (<i>new</i>)
	Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels should be handed over.	Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.
	ARTICLE 13 (<i>new</i>)	ARTICLE 13 (<i>new</i>)
	If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, measures must be taken that they do not again take part in the operations of the war.	If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, measures must be taken that they do not again take part in the operations of the war.
ARTICLE 9	ARTICLE 14	ARTICLE 14
The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port.	The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port.	The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port.
In this last case, prisoners thus repatriated cannot serve again while the war lasts.	In this last case, prisoners thus repatriated cannot serve again while the war lasts.	In this last case, prisoners thus repatriated cannot serve again while the war lasts.
ARTICLE 10 (<i>not ratified</i>)	ARTICLE 15	ARTICLE 15
The shipwrecked, wounded, or sick who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.	The shipwrecked, wounded, or sick who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.	The shipwrecked, wounded, or sick who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

*Text of the Convention of
July 29, 1864*

The expenses of tending them in hospital and internment shall be borne by the State to which the shipwrecked, sick, or wounded belong.

*Text proposed by the Com-
mittee of Examination*

The expenses of tending them in hospital and internment shall be borne by the State to which the shipwrecked, sick, or wounded belong.

ARTICLE 16 (*new*)

After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill-treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpse.

ARTICLE 17

Each belligerent shall send, as early as possible, to the authorities of their country, navy, or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

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*Text of the Convention of
July 29, 1899*

ARTICLE 11

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

*Text proposed by the Com-
mittee of Examination*

ARTICLE 18

The rules contained in the above articles are binding on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

*Text proposed to the Confer-
ence by the Third Commission*

ARTICLE 18

The rules contained in the above articles are binding on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

[319]

ARTICLE 19 (*new*)

The commanders in chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ARTICLE 20 (*new*)

The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

ARTICLE 21

The signatory Powers likewise undertake to enact or to propose to their legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of

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military insignia, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

ARTICLE 22 (*new*)

In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

ARTICLE 23

The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 24

Non-signatory Powers which have accepted the Geneva Convention of July 6, 1906, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 25 (*new*)

The present Convention, duly ratified, shall replace as be-

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The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers

[320] ARTICLE 13

Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

*Text of the Convention of
July 29, 1899*

*Text proposed by the Com-
mittee of Examination*

*Text proposed to the Confer-
ence by the Third Commission*

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The Convention of 1899 remains in force as between the parties which signed it but which do not also ratify the present Convention.

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The Convention of 1899 remains in force as between the Powers which signed it but which do not also ratify the present Convention.

ARTICLE 14

ARTICLE 26

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In the event of one of the high contracting parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

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This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

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Annex C**CONVENTION FOR THE AMELIORATION OF THE CONDITION OF
THE SICK AND WOUNDED IN ARMIES IN THE FIELD***(Signed July 6, 1906)*

His Majesty the Emperor of Germany, King of Prussia; his Excellency the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Royal Highness the Prince of Bulgaria; his Excellency the president of the Republic of Chile; His Majesty the Emperor of China; His Majesty the King of the Belgians, Sovereign of the Congo Free State; His Majesty the Emperor of Corea; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the United States of America; the President of the United States of Brazil; the President of the United Mexican States; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Honduras; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; His Majesty the King of Norway; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Serbia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; the President of the Oriental Republic of Uruguay.

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field,

[322] Have decided to conclude a new convention to that effect, and have appointed as their plenipotentiaries, to wit:

His Majesty the Emperor of Germany, King of Prussia: his Excellency the Chamberlain and Actual Privy Councilor A. von BÜLOW, Envoy Extraordinary and Minister Plenipotentiary at Berne, General of Brigade Baron von MANTEUFFEL, Medical Inspector and Surgeon General Dr. VILLARET (with rank of general of brigade), Dr. ZORN, Privy Councilor of Justice, ordinary professor of law at the University of Bonn, Solicitor of the Crown;

His Excellency the President of the Argentine Republic: his Excellency Mr. ENRIQUE B. MORENO, Envoy Extraordinary and Minister Plenipotentiary at Berne, Mr. MOLINA SALAS, Consul General in Switzerland;

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary: his Excellency Baron HEIDLER VON EGEREK AND SYRGENSTEIN, Actual Privy Councilor, Envoy Extraordinary and Minister Plenipotentiary at Berne;

His Majesty the King of the Belgians: Colonel of Staff Count DE T'SERCLAES, Chief of Staff of the Fourth Military District:

His Royal Highness the Prince of Bulgaria: Dr. MARIN ROUSSEFF, Chief Medical Officer, Captain of Staff BORIS SIRMANOFF;

His Excellency the President of the Republic of Chile: Mr. AUGUSTIN EDWARDS, Envoy Extraordinary and Minister Plenipotentiary;

His Majesty the Emperor of China: his Excellency Mr. LOU TSENG-TSIANG, Envoy Extraordinary and Minister Plenipotentiary to The Hague;

His Majesty the King of the Belgians, Sovereign of the Congo Free State: Colonel of Staff Count DE T'SERCLAES, Chief of Staff of the Fourth Military District of Belgium;

His Majesty the Emperor of Corea: his Excellency Mr. TSUNETADA KATO, Envoy Extraordinary and Minister Plenipotentiary of Japan to Brussels;

His Majesty the King of Denmark: Mr. LAUB, Surgeon General, Chief of the Medical Corps of the Army;

[323] His Majesty the King of Spain: his Excellency Mr. SILVERIO DE BAGUER Y CORSI, Count of Baguer, Minister Resident;

The President of the United States of America: Mr. WILLIAM CARY SANGER, former Assistant Secretary of War of the United States of America, Vice Admiral CHARLES S. SPERRY, President of the Naval War College, Brigadier General GEORGE B. DAVIS, Judge Advocate General of the Army, Brigadier General ROBERT M. O'REILLY, Surgeon General of the Army;

The President of the United States of Brazil: Dr. CARLOS LEMGRUBER-KROPF, Chargé d'Affaires at Berne, Colonel of Engineers ROBERTO TROMPOWSKI LEITÃO D'ALMEIDA, Military Attaché to the Brazilian Legation at Berne;

The President of the United Mexican States: General of Brigade JOSÉ MARIA PEREZ;

The President of the French Republic: his Excellency Mr. RÉVOIL, Ambassador to Berne, Mr. LOUIS RENAULT, member of the Institute of France, Minister Plenipotentiary, Jurisconsult of the Ministry of Foreign Affairs, professor in the Faculty of Law at Paris, Colonel OLIVIER of Reserve Artillery, Chief Surgeon PAUZAT of the Second Class;

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India: Major General Sir JOHN CHARLES ARDAGH, K. C. M. G., K. C. L. E., C. B., Professor THOMAS ERSKINE HOLLAND, K. C., D. C. L., Sir JOHN FURLEY, C. B., Lieutenant Colonel WILLIAM GRANT MACPHERSON, C. M. G., R. A. M. C.;

His Majesty the King of the Hellenes: Mr. MICHEL KEBEDGY, professor of international law at the University of Berne;

The President of the Republic of Guatemala: Mr. MANUEL ARROYO, Chargé d'Affaires at Paris, Mr. HENRI WISWALD, Consul General to Berne, residing at Geneva;

The President of the Republic of Honduras: Mr. OSCAR HÖPFL, Consul General to Berne;

His Majesty the King of Italy: Marquis ROGER MAURIGI DI CASTEL

MAURIGI, Colonel in His Army, Grand Officer of His Royal Order of the SS. Maurice and Lazare, Major General GIOVANNI RANDONE, Military Medical Inspector, Commander of His Royal Order of the Crown of Italy;

[324] His Majesty the Emperor of Japan: his Excellency Mr. TSUNETADA KATO, Envoy Extraordinary and Minister Plenipotentiary to Brussels;

His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau: Staff Colonel Count DE T'SERCLAES, Chief of Staff of the Fourth Military District of Belgium;

His Highness the Prince of Montenegro: Mr. E. ODIER, Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation in Russia, Colonel MÜRSET, Chief Surgeon of the Swiss Federal Army;

His Majesty the King of Norway: Captain DAAE, of the Medical Corps of the Norwegian Army;

Her Majesty the Queen of the Netherlands: Lieutenant General (retired) Jonkheer J. C. C. DEN BEER POORTUGAEL, member of the Council of State, Colonel A. A. J. QUANJER, Chief Medical Officer, First Class;

The President of the Republic of Peru: Mr. GUSTAVO DE LA FUENTE, First Secretary of the Legation of Peru at Paris;

His Imperial Majesty the Shah of Persia: his Excellency Mr. SAMAD KHAN MONTAZ-OS-SALTANEH, Envoy Extraordinary and Minister Plenipotentiary at Paris;

His Majesty the King of Portugal and of the Algarves, etc.: his Excellency Mr. ALBERTO D'OLIVEIRA, Envoy Extraordinary and Minister Plenipotentiary at Berne, Mr. JOSÉ NICOLAU RAPOSO-BOTELHO, Colonel of Infantry, former Deputy, Superintendent of the Royal Military College at Lisbon;

His Majesty the King of Roumania: Dr. SACHE STEPHANESCO, Colonel of Reserve;

His Majesty the Emperor of All the Russias: his Excellency Privy Councillor MARTENS, Permanent Member of the Council of the Ministry of Foreign Affairs of Russia;

His Majesty the King of Serbia: Mr. MILAN ST. MARKOVITCH, Secretary General of the Ministry of Justice, Colonel Dr. SONDERMAYER, Chief of the Medical Division of the War Ministry;

His Majesty the King of Siam: Prince CHAROON, Chargé d'Affaires at Paris, Mr. CORRAGONI D'ORELLI, Counselor of Legation at Paris;

[325] His Majesty the King of Sweden: Mr. SÖRENSEN, Chief Surgeon of the Second Division of the Army;

The Swiss Federal Council: Mr. E. ODIER, Envoy Extraordinary and Minister Plenipotentiary in Russia, Colonel MÜRSET, Chief Surgeon of the Federal Army;

The President of the Oriental Republic of Uruguay: Mr. ALEXANDRE HEROSA, Chargé d'Affaires at Paris,

Who, after having communicated to each other their full powers, found in good and due form, have agreed on the following:

CHAPTER I.—*The sick and wounded*

ARTICLE 1

Officers, soldiers and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, however, when compelled to leave his wounded in the hands of his adversary, shall leave with them, so far as military conditions permit, a portion of the personnel and *matériel* of his sanitary service to assist in caring for them.

ARTICLE 2

Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have authority to agree:

1. To mutually return the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported and whom they do not desire to retain as prisoners.

3. To send the sick and wounded of the enemy to a neutral State, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

ARTICLE 3

After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from robbery and ill-treatment.

He will see that a careful examination is made of the bodies of the dead prior to their internment or incineration.

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ARTICLE 4

As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead, together with a list of names of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of internments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.

ARTICLE 5

Military authority may make an appeal to the charitable zeal of the inhabitants to receive and, under its supervision, to care for the sick and wounded of the armies, granting to persons responding to such appeals special protection and certain immunities.

CHAPTER II.—*Sanitary formations and establishments*

ARTICLE 6

Mobile sanitary formations (*i.e.*, those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

ARTICLE 7

The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

ARTICLE 8

A sanitary formation or establishment shall not be deprived of the protection accorded by Article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its sick and wounded.
2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.
3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.

CHAPTER III.—*Personnel*

ARTICLE 9

The personnel charged exclusively with the removal, transportation and treatment of the sick and wounded, as well as with the administration of [327] sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be considered as prisoners of war.

These provisions apply to the guards of sanitary formations and establishments in the case provided for in section 2 of Article 8.

ARTICLE 10

The personnel of volunteer aid societies, duly recognized and authorized by their own Governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each State shall make known to the other, either in time of peace or at the opening, or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.

ARTICLE 11

A recognized society of a neutral State can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own Government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof.

ARTICLE 12

Persons described in Articles 9, 10 and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

When their assistance is no longer indispensable they will be sent back to their army or country, within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property.

ARTICLE 13

While they remain in his power, the enemy will secure to the personnel mentioned in Article 9 the same pay and allowances to which persons of the same grade in his own army are entitled.

CHAPTER IV.—*Matériel*

ARTICLE 14

If mobile sanitary formations fall into the power of the enemy, they shall retain their *matériel*, including the teams, whatever may be the means of transportation and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the *matériel* shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

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ARTICLE 15

Buildings and *matériel* pertaining to fixed establishments shall remain subject to the laws of war, but cannot be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for.

ARTICLE 16

The *matériel* of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private property and, as such, will be respected under all circumstances, save that it is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war.

CHAPTER V.—*Convoys of evacuation*

ARTICLE 17

Convoys of evacuation shall be treated as mobile sanitary formations subject to the following special provisions:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy, charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to return the sanitary personnel, as provided for in Article 12, shall be extended to include the entire military personnel employed, under competent orders, in the transportation and protection of the convoy.

The obligation to return the sanitary *matériel*, as provided for in Article 14, shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, as well as to the ordinary vehicles, trains and vessels which belong to the sanitary service.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

The civil personnel and the various means of transportation obtained by requisition, including railway *matériel* and vessels utilized for convoys, are subject to the general rules of international law.

CHAPTER VI.—*Distinctive emblem*

ARTICLE 18

Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

ARTICLE 19

This emblem appears on flags and brassards as well as upon all *matériel* appertaining to the sanitary service, with the permission of the competent military authority.

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ARTICLE 20

The personnel protected in virtue of the first paragraph of Article 9, and Articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

ARTICLE 21

The distinctive flag of the Convention can only be displayed over the sanitary formations and establishments which the Convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

ARTICLE 22

The sanitary formations of neutral countries which, under the conditions set forth in Article 11, have been authorized to render their services, shall fly

with the flag of the Convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

ARTICLE 23

The emblem of the red cross on a white ground and the words *Red Cross* or *Geneva Cross* may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and *matériel* protected by the Convention.

CHAPTER VII.—*Application and execution of the Convention*

ARTICLE 24

The provisions of the present Convention are obligatory only on the contracting Powers, in case of war between two or more of them. The said provisions shall cease to be obligatory if one of the belligerent Powers should not be signatory to the Convention.

ARTICLE 25

It shall be the duty of the commanders in chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective Governments, and conformably to the general principles of this Convention.

ARTICLE 26

The signatory Governments shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this Convention and to make them known to the people at large.

[330] CHAPTER VIII.—*Repression of abuses and infractions*

ARTICLE 27

The signatory Powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this Convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this Convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

ARTICLE 28

In the event of their military penal laws being insufficient, the signatory Governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of robbery and ill-treatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of

the Red Cross by military persons or private individuals not protected by the present Convention.

They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression, not later than five years from the ratification of the present Convention.

General provisions

ARTICLE 29

The present Convention shall be ratified as soon as possible. The ratifications will be deposited at Berne.

A record of the deposit of each act of ratification shall be prepared, of which a duly certified copy shall be sent, through diplomatic channels, to each of the contracting Powers.

ARTICLE 30

The present convention shall become operative, as to each Power, six months after the date of deposit of its ratification.

ARTICLE 31

The present Convention, when duly ratified, shall supersede the Convention of August 22, 1864, in the relations between the contracting States.

The Convention of 1864 remains in force in the relations between the parties who signed it but who may not also ratify the present Convention.

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ARTICLE 32

The present Convention may, until December 31, proximo, be signed by the Powers represented at the conference which opened at Geneva on June 11, 1906, as well as by the Powers not represented at the conference who have signed the Convention of 1864

Such of these Powers as shall not have signed the present convention on or before December 31 1906, will remain at liberty to accede to it after that date. They shall signify their adherence in a written notification addressed to the Swiss Federal Council, and communicated to all the contracting Powers by the said Council.

Other Powers may request to adhere in the same manner, but their request shall only be effective if, within the period of one year from its notification to the Federal Council, such Council has not been advised of any opposition on the part of any of the contracting Powers

ARTICLE 33

Each of the contracting parties shall have the right to denounce the present Convention. This denunciation shall only become operative one year after a notification in writing shall have been made to the Swiss Federal Council, which shall forthwith communicate such notification to all the other contracting parties.

This denunciation shall only become operative in respect to the Power which has given it.

In faith whereof the plenipotentiaries have signed the present convention and affixed their seals thereto.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy, which shall remain in the archives of the Swiss Confederation and certified copies of which shall be delivered to the contracting parties through diplomatic channels.

For Germany:

(L.S.) v. BÜLOW.
(L.S.) FRHR. v. MANTEUFFEL.
(L.S.) VILLARET.
ZORN.

For the Argentine Republic:

(L.S.) ENRIQUE B. MORENO.
(L.S.) FRAN^{co}. MOLINA SALAS.

For Austria-Hungary:

(L.S.) FRHR. v. HEIDLER (*ad referendum*).

For Belgium:

(L.S.) Count J. DE T'SERCLAES.

For Bulgaria:

(L.S.) Dr. ROUSSEFF.
(L.S.) Captain SIRMANOFF.

For Chile:

(L.S.) AGUSTIN EDWARDS.

For China:

(L.S.) LOU TSENG-TSIANG.

For Congo:

(L.S.) Count J. DE T'SERCLAES.

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For Corea:

(L.S.) KATO TSUNETADA.

For Denmark:

(L.S.) H. LAUB.

For Spain:

(L.S.) Count SILVERIO DE BAGUER.

For the United States of America:

WM. CARY SANGER.
(L.S.) C S. SPERRY.
(L.S.) GEO. B DAVIS.
(L.S.) R. M. O'REILLY.

For the United States of Brazil:

- (L.S.) C. LEMGRUBER-KROPP.
Colonel ROBERTO TROMPOWSKI LEITÃO D'ALMEIDA.

For the United States of Mexico:

- (L.S.) JOSÉ M. PFREZ (*ad referendum*).

For France:

- (L.S.) RÉVOIL.
(L.S.) L. RENAULT.
(L.S.) S. OLIVIER.
(L.S.) E. PAUZAT.

For Great Britain and Ireland:

- | | |
|------------------------------|--|
| (L.S.) JOHN C. ARDAGH. | } With reserve of Articles 23, 27, 28. |
| (L.S.) T. E. HOLLAND. | |
| (L.S.) JOHN FURLEY. | |
| (L.S.) WM. GRANT MACPHERSON. | |

For Greece:

MICHEL KEBEDGY.

For Guatemala:

- (L.S.) MANUEL ARROYO.
(L.S.) H. WISWALD.

For Honduras:

OSCAR HEPFL.

For Italy:

- (L.S.) MAURIGI.
(L.S.) RANDONE.

For Japan:

- (L.S.) KATO TSUNETADA.

For Luxemburg:

- (L.S.) Count J. DE T'SERCLAES.

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For Montenegro:

- (L.S.) E. ODIER.
Colonel MÜRSET.

For Norway:

HANS DAAE.

For the Netherlands:

- (L.S.) DEN BEER POORTUGAEL.
(L.S.) QUANJER.

THIRD COMMISSION

For Peru:

(L.S.) GUSTAVO DE LA FUENTE.

For Persia:

(L.S.) MOMTAZ-OS-SALTANEH M. SAMAD KHAN. Under reservation of Article 18.

For Portugal:

(L.S.) ALBERTO D'OLIVEIRA.

(L.S.) JOSÉ NICOLAU RAPOSO-BOTELHO.

For Roumania:

(L.S.) Dr. SACHE STEPHANESCO.

For Russia:

(L.S.) MARTENS.

For Serbia:

(L.S.) MILAN ST. MARKOVITCH.

(L.S.) Dr. ROMAN SONDERMAYER.

For Siam:

(L.S.) CHAROON.

(L.S.) CORRAGONI D'ORELLI.

For Sweden:

(L.S.) OLOF SÖRENSEN.

For Switzerland:

(L.S.) E. ODIER.

Colonel MÜRSET.

For Uruguay:

(L.S.) A. HEROSA.

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Final Protocol of the Conference for the Revision of the Geneva Convention

The Conference called by the Swiss Federal Council, with a view to revising the International Convention of August 22, 1864, for the amelioration of the condition of soldiers wounded in armies in the field, met at Geneva on June 11, 1906. The Powers hereinbelow enumerated took part in the Conference to which they had designated the delegates hereinbelow named:

Germany

His Excellency the Chamberlain and Actual Privy Councilor A. VON BÜLOW,
 Envoy Extraordinary at Berne,
 General of Brigade Baron VON MANTEUFFEL,

Medical Inspector, Surgeon General Dr. VILLARET (with rank of general of brigade),

Dr. ZORN, Privy Councilor of Justice, ordinary professor of law at the University of Bonn, Solicitor of the Crown.

Argentine Republic

His Excellency Mr. ENRIQUE B. MORENO, Envoy Extraordinary and Minister Plenipotentiary at Berne,

Mr. MOLINA SALAS, Consul General in Switzerland.

Austria-Hungary

His Excellency Baron HEIDLER VON EGEREK UND SYRGENSTEIN, Actual Privy Councilor, Envoy Extraordinary and Minister Plenipotentiary at Berne,

Knight JOSEPH D'URIEL, Surgeon in Chief of the Imperial and Royal Austro-Hungarian Army, Chief of the Corps of Medical Officers and of the Fourth Department of the Imperial and Royal War Ministry,

Mr. ARTHUR EDLER MECENSEFFY, Lieutenant Colonel of General Staff Corps,

Dr. ALFRED SCHÜCKING, Lieutenant Colonel, Surgeon in Chief of the Garrison of Salzburg.

Belgium

Staff Colonel Count DE T'SERCLAES, Chief of Staff of the Fourth Military District,

Dr. A. DELTENRE, Regimental Surgeon of the Carbineers.

Bulgaria

Dr. MARIN ROUSSEFF, Director of Sanitary Service,

Staff Captain BORIS SIRMANOFF.

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Chile

Mr. AGUSTIN EDWARDS, Envoy Extraordinary and Minister Plenipotentiary,

Mr. CHARLES ACKERMANN, Consul of Chile at Geneva.

China

His Excellency LOU TSENG-TSIANG, Envoy Extraordinary and Minister Plenipotentiary at The Hague,

Mr. OU WEN TAI, Secretary of Legation at The Hague,

Mr. YO TSAO YEU, Secretary of the Special Mission of China in Europe.

Congo

Staff Colonel Count DE T'SERCLAES, Chief of Staff of the Fourth Military District of Belgium,

Dr. A. DELTENRE, Regimental Surgeon of the Carbineers, of Belgium.

Corea

His Excellency Mr. KATO TSUNETADA, Envoy Extraordinary and Minister Plenipotentiary of Japan at Brussels,

Mr. MOTOJIRO AKASHI, Colonel of Infantry,

Dr. of Medicine EIJIRO HAGA, Chief Surgeon of the First Class (with rank of colonel),

Prince SANETERU ITCHIJŌ, frigate captain (rank of lieutenant colonel),

Doctor of Law MASANOSUKE AKIYAMA, Councilor in the War Ministry of Japan.

Denmark

Mr. LAUB, Surgeon General, Chief of the Corps of Surgeons of the Army.

Spain

His Excellency Mr. SILVERIO DE BAGUER Y CORSI, Count DE BAGUER, Minister Resident,

Mr. JOSÉ JOFRE MONTOJO, Staff Colonel, Aide-de-camp of the War Ministry,

Mr. JOAQUIN CORTÉS BAYONA, Subinspector of First Class of the Military Medical Corps.

United States of America

Dr. WILLIAM CARY SANGER, former Assistant Secretary of War of the United States,

Rear Admiral CHARLES S. SPERRY, President of the Naval War College,

Brigadier General GEORGE B. DAVIS, Advocate General of the Army,

Brigadier General ROBERT M. O'REILLY, Surgeon General of the Army.

United States of Brazil

Dr. CARLOS LEMGRUBER-KROPF, Chargé d'Affaires at Berne,

Colonel of Engineers ROBERTO TROMPOWSKI LEITÃO D'ALMEIDA, Military Attaché in the Brazilian Legation at Berne.

United Mexican States

Brigadier General JOSÉ MARIA PÉREZ.

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France

His Excellency Mr. RÉVOIL, Ambassador at Berne,

Mr. LOUIS RENAULT, member of the Institute of France, Plenipotentiary Minister, Solicitor of the Ministry of Foreign Affairs, Professor in the Faculty of Law at Paris,

Colonel Breveté of Reserve Artillery OLIVIER,

Second Class Chief Surgeon PAUZAT.

Great Britain and Ireland

Major General Sir JOHN CHARLES ARDAGH, K.C.M.G., K.C.I.E., G.B.,

Professor THOMAS ERSKINE HOLLAND, K.C., D.C.L.,

Sir JOHN FURLEY, C.B.,

Lieutenant Colonel WILLIAM GRANT MAC PHERSON, C.M.G., R.A.M.C.

Greece

Mr. MICHEL KEBEDGY, professor of international law at the University of Berne.

Guatemala

Mr. MANUEL ARROYO, Chargé d'Affaires at Paris,

Mr. HENRI WISWALD, Consul General at Berne, residing at Geneva.

Honduras

Mr. OSCAR HÖPFL, General Consul at Berne.

Italy

Marquis ROGER MAURIGI DI CASTEL MAURIGI, Colonel, Grand Officer of the Royal Order of the SS. Maurice and Lazare,

Major General GIOVANNI RANDONE, Military Medical Inspector, Commander of the Royal Order of the Crown of Italy.

Japan

His Excellency Mr. KATO TSUNETADA, Envoy Extraordinary and Minister Plenipotentiary to Brussels,

Mr. MOTOJIRO AKASHI, Colonel of Infantry,

Dr. of Medicine EIJIRO HAGA, Chief Surgeon of the First Class (with rank of Colonel),

Prince SANETERU ITCHIJO, Captain of Frigate (rank of Lieutenant Colonel),

Dr. of Law MASANOSUKE AKIYAMA, Councilor in the Ministry of War.

Luxemburg

Staff Colonel Count DE T'SERCLAES, Chief of Staff of the Fourth Military District of Belgium,

Dr. A. DELTENRE, Regimental Surgeon of the Carbineers, of Belgium.

Montenegro

Mr. E. ODIER, Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation in Russia,

Colonel MÜRSET, Chief Surgeon of the Swiss Federal Army.

Nicaragua

Mr. OSCAR HÖPFL, General Consul of Honduras at Berne.

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Norway

Captain DAAE, of the Medical Corps of the Norwegian Army.

Netherlands

Lieutenant General (retired) Jonkheer J. C. C. DEN BEER POORTUGAEL, Member of the Council of State,

Colonel A. A. J. QUANJER, Chief Medical Officer, first class.

Peru

Mr. GUSTAVO DE LA FUENTE, First Secretary of the Legation of Peru at Paris.

Persia

His Excellency SAMAD KHAN MOMTAZ-OS-SALTANEH, Envoy Extraordinary and Minister Plenipotentiary at Paris.

Portugal

His Excellency Mr. ALBERTO D'OLIVEIRA, Envoy Extraordinary and Minister Plenipotentiary at Berne

Mr. JOSÉ NICOLAU RAPOSO-BOTELHO, Colonel of Infantry, former Deputy, Superintendent of the Royal Military College at Lisbon.

Roumania

Dr. SACHE STEPHANESCO, Colonel of Reserve.

Russia

His Excellency Privy Councilor MARTENS, permanent member of the Council of the Ministry of Foreign Affairs of Russia,

Major General YERMOLOFF, of the Russian General Staff,

Actual Councilor of State and Dr. of Medicine DE HUBBENET,

Councilor of State DE WREDEN, professor attached to the Imperial Academy of Medicine,

Mr. J. OWTCHINNIKOFF, Lieutenant Colonel, professor of international law at the Naval Academy at St. Petersburg,

Mr. A. GOUTCHKOFF, delegate of the Red Cross.

Serbia

Mr. MILAN ST. MARKOVITCH, Chief Clerk of the Ministry of Justice,

Colonel Dr. SONDERMAYER, Chief of the Medical Division of the War Ministry.

Siam

Prince CHAROON, Chargé d'Affaires at Paris,

Mr. CORRAGONI D'ORELLI, Councilor of Legation at Paris.

Sweden

Mr. SÖRENSEN, Chief Surgeon of the Second Division of the Army.

Switzerland

Mr. ODIER, Envoy Extraordinary and Minister Plenipotentiary in Russia, Colonel MÜRSET, Chief Surgeon of the Federal Army.

Uruguay

Mr. ALEXANDRE HEROSA, Chargé d'Affaires at Paris.

[338] In a series of meetings held from the 11th of June to the 5th of July 1906, the Conference discussed and framed, for the signatures of the plenipotentiaries, the text of a Convention which will bear the date of July 6, 1906.

In addition, and conformably to Article 16 of the Convention for the peaceful settlement of international disputes, of July 29, 1899, which recognized arbitration as the most effective and at the same time, most equitable means of adjusting differences that have not been resolved through the diplomatic channel, the Conference uttered the following wish:

The Conference expressed the wish that, in order to arrive at as exact as possible an interpretation and application of the Geneva Convention, the Contracting Powers will refer to the Permanent Court at The Hague, if permitted by the cases and circumstances, such differences as may arise among them, in time of peace, concerning the interpretation of the said Convention.

This wish was adopted by the following States:

Germany, Argentine Republic, Austria-Hungary, Belgium, Bulgaria, Chile, China, Congo, Denmark, Spain (*ad referendum*), United States of America, United States of Brazil, France, Greece, Guatemala, Honduras, Italy, Luxemburg, Montenegro, Nicaragua, Norway, the Netherlands, Peru, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden, Switzerland and Uruguay.

The wish was rejected by the following States:

Corea, Great Britain and Japan.

In witness whereof the delegates have signed the present Protocol.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy which shall be deposited in the archives of the Swiss Confederation and certified copies of which shall be delivered to all the Powers represented at the Conference.

For Germany:

v. BÜLOW.
Frhr. v. MANTEUFFEL.
VILLARET.
ZORN.

For the Argentine Republic:

ENRIQUE B. MORENO.
FRAN^{co} MOLINA SALAS.

For Austria-Hungary:

Baron HEIDLER-EGEREKG, delegate plenipotentiary.
Dr. JOS. RITTER v. URIEL, G. Lieut., assistant delegate.
ARTHUR VON MECENSEFFY, Lieutenant Colonel, Assistant delegate.
Dr. ALFRED SCHÜCKING, O. St. A., Surgeon in Chief of the Garrison of Salzburg, assistant delegate.

For Belgium:

Count J. DE T'SERCLAES.
Dr. A. DELTENRE.

For Bulgaria:

Dr. ROUSSEFF.
Captain SIRMANOFF.

For Chile:

AGUSTIN EDWARDS.
CH. ACKERMANN.

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For China:

LOU TSENG-TSIANG.
OU WENTAL.
YOTSAOYEU.

For Congo:

Count J. DE T'SERCLAES.
Dr. A. DELTENRE.

For Corea:

KATO TSUNETADA.
Colonel M. AKASHI.
Prince ITCHIO.
M. AKIYAMA.

For Denmark:

H. LAUB.

For Spain:

Count DE BAGUER. JOSÉ JOFRE MONTOJO. JOAQUIN CORTÉS Y BAYONA.	} (<i>ad referendum</i>).
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For the United States of America:

WM. CARY SANGER.
C. S. SPERRY.
GEO. B. DAVIS.
R. M. O'REILLY.

For the United States of Brazil:

C. LEMGRUBER-KROPP.
Colonel ROBERTO TROMPOWSKI LEITÃO D'ALMEIDA.

For the United Mexican States:

JOSÉ M. PÉREZ.

For France:

RÉVOIL.
L. RENAULT.
S. OLIVIER.
E. PAUZAT.

For Great Britain and Ireland:

JOHN C. ARDAGH.
T. E. HOLLAND.
JOHN FURLEY.
W. G. MACPHERSON.

For Greece:

MICHEL KEBEDGY.

For Guatemala:

MANUEL ARROYO.
H. WISWALD.

For Honduras:

OSCAR HEPFL.

For Italy:

MAURIGI.
G. RANDONE.

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For Japan:

KATO TSUNETADA.
Col. M. AKASHI.
Prince ITCHIJO.
M. AKIYAMA.

For Luxemburg:

Count J. DE T'SERCLAES.
Dr. A. DELTENDRE.

For Montenegro:

E. ODIER.
Colonel MÜRSET.

For Nicaragua:

OSCAR HEPFL.

For Norway:

HANS DAAE.

For the Netherlands:

DEN BEER POORTUGAEL.
QUANJER.

For Peru:

GUSTAVO DE LA FUENTE.

For Persia:

M. SAMAD KHAN.

For Portugal:

ALBERTO D'OLIVEIRA.
JOSÉ NICOLAU RAPOSO-BOTELHO.

For Roumania:

Dr. SACHE STEPHANESCO.

For Russia:

MARTENS.
YERMOLOW.
V. DE HUBBENET.
J. OWTCHINNIKOW.

For Serbia:

MILAN ST. MARKOVITCH.
Dr. ROMAN SONDERMAYER.

For Siam:

CHAROON.
CORRAGIONI D'ORELLI.

For Sweden:

OLOF SÖRENSEN.

For Switzerland:

E. ODIER.
Colonel MÜRSET.

For Uruguay:

A. HEROSA.

THIRD MEETING

AUGUST 8, 1907

His Excellency Count Tornielli presiding.

The meeting opened at 3 o'clock.

The minutes of the second meeting of the Commission, as well as the minutes of the third, fourth and fifth meetings of the second subcommission, are approved.

The **President** mentions the object of the plenary meeting which is the examination of the draft Convention relating to naval bombardment of ports, towns and villages in time of war.¹

The clear and precise report² of the distinguished reporter, Mr. GEORGIOS STREIT, having already been distributed some days ago, his Excellency Count TORNIELLI thinks that the assembly will not deem it necessary to give it a preliminary reading. He will merely ask the reporter to be so kind as to read the part of his report concerning each article piecemeal as the articles come under discussion. At the same time the Commission will take account of the purely editorial formulas presented by the delegation of Belgium after the close of the debates in the committee of examination.³

ARTICLE 1

It is forbidden to bombard by naval forces undefended ports, towns, villages, dwellings or buildings.

A town is not considered defended by the sole fact that submarine mines are anchored off the harbor.

The **President** indicates that it seems to him that Article 1 should not meet with any opposition, especially as regards paragraph 1, which he reads.

No objection being presented to this provision, it is considered as approved.

The **President** then reads paragraph 2 of Article 1 and asks the reporter to read the part of his report dealing with that provision.

Mr. Georgios Streit (reporter) thanks the Commission for the honor done him by entrusting to him the report on the two delicate subjects referred [342] to the first subcommission, and expresses to the president his gratitude for the kind words that he has just uttered regarding him. He then reads the following passage of the report:

The first article of the project which we have the honor to submit to you corresponds in its first paragraph to Article 25 of the Regulations of

¹ Annex B to this day's minutes. Bombardment by naval forces of undefended towns, villages and dwellings; see also vol. i, fourth meeting, pp. 86-88 [89-90].

² Annex A to this day's minutes.

³ Annex B to this day's minutes.

1899 respecting the laws and customs of war on land; it extends to naval forces the prohibition against bombardment of undefended ports, towns, villages, dwellings, or buildings. We did not think it best to specify, as did the original propositions of the United States and Netherlands,¹ that the prohibition relates to undefended "and unfortified" towns, etc. In the first place, it should be firmly established that the existence of fortifications does not of itself suffice to permit the bombardment of the place fortified if the fortifications are not defended; and, secondly, every legitimate anxiety seems to be swept away by the provision of Article 2 which, even in the case of undefended towns, etc., concedes the possibility of directing a bombardment against them for the purpose of destroying by cannon fire, under certain conditions, military works, or military or naval establishments, and consequently any fortifications.

With respect to the meaning of "undefended"—and the attention of the subcommission was particularly drawn to this point by his Excellency General DEN BEER POORTUGAEL and Captain BURLAMAQUI, who considered especially the case of a town defended only on the side of the sea—we believed that we should refrain from formulating a definition in the text itself of the project, in view of the difficulty of defining precisely this purely negative idea. The identical wording of the Regulations on war on land, we may add, has not given rise to controversy on this head. But the subcommission expressly refers to the explanations given in the meeting of July 18 of the first subcommission of the Third Commission, in order that they may serve as an interpretation of its text. His Excellency General DEN BEER POORTUGAEL drew a particular distinction between the defense of a coast and the defense of a town situated near the coast. The defense of the coast might necessitate firing on the instruments themselves of such defense, but a right of bombarding the town which the defense of the coast might indirectly serve, unless the town itself were defended, should not be granted.

Another question along the same line was examined. It was common to the two topics assigned to this subcommission, and was settled by the technical committee charged with the final drafting of the regulations concerning the laying of mines. The question was whether a town should be considered as defended in the sense of paragraph 1 by the sole fact that automatic submarine contact mines are anchored off its harbor. It seemed that the question should receive a negative answer, as the sole fact of the existence of automatic contact mines before a place could not justify a bombardment of that place. Nevertheless, there was some hesitation as to the phrasing to give this particular idea, and some members of the committee expressed reservations with respect to the text adopted as well as to the usefulness of a declaration on this subject. The majority of the committee believed that this point should be expressly mentioned, and there was unanimous agreement that the most natural place for the stipulation was in the provisions concerning the bombardment of undefended places. Hence paragraph 2 of Article 1.

The **President**, after having remarked that the considerations just listened to refer to the whole of Article 1, recalls that only paragraph 2 of this article is under discussion; he asks if anybody desires to make remarks on the subject of this provision.

[343] Captain **Ottley**, in the name of the British delegation, reads the following declaration:

¹ Annexes 1 and 4.

Mr. President, I would like to say a few words to explain the reservation made in the name of the British delegation with regard to paragraph 2 of Article 1, which is worded thus: "A place cannot be bombarded by the sole fact that automatic submarine contact mines are anchored off it."

At first glance this proposition might appear quite acceptable since these mines are indeed only passive defense and can only harm an enemy when he approaches such locality. To bombard a town because it has thus insured its immunity seems therefore, from this point of view, to be an unjustifiable outrage.

But on the other hand it may likewise be argued that cannons constitute only a passive defense, since it is only through approaching them that a vessel can be struck.

Now cannon fire can but seldom destroy a vessel on the open sea, whilst the explosion of a single mine will certainly sink it.

Besides, it does not seem logical to us to render inviolable a town that is defended by means of mines while at the same time we refuse the same privilege to a town defended by its guns.

It is in the interest of all neutral countries to make the sea free from these murderous engines, since, as they are wholly blind, they are dangerous alike for friends, enemies, neutrals and non-combatants. From this point of view it is of the highest importance that the unlimited and purposeless employment of these mines be restricted as much as possible.

In the case before us the laying of mines will certainly be to no purpose, since—as is assumed—the town being otherwise undefended, it will not be exposed to bombardment.

We may frankly ask ourselves, why will mines be placed off such a port?

It is not exposed to any danger and the laying of mines is consequently nothing less than a doubtful defense against a non-existent danger.

It seems that the proposal has reference to the special situation of certain coast towns which, although not defended by guns, have yards for building ships or other military establishments that an enemy might reasonably wish to destroy.

It is natural that the idea has risen to wish to defend ports of this class in this way at the same time as they are given immunity from bombardment.

But I fear that the interests of the neutrals as well as those of belligerents will be seriously damaged if we adopt such a rule; so I beg the Commission to accept our amendment, that is to say, to "omit the second paragraph of Article 1."

This amendment would put us in accord with Article 25 of the Regulations respecting the laws and customs of war on land.¹

Besides, it would apply this fundamental principle, that a belligerent, while granting immunity to an undefended enemy place, has a right to make use of that undefended place and to expect that in approaching a so-called undefended town, he is not exposed to being destroyed by those who claim to be inviolable under the bizarre pretext that their town is not defended.

[344] His Excellency Mr. Keiroke Tsudzuki says that the delegation of Japan regrets that it cannot accept the provision contained in paragraph 2 of

¹ *Ante*, Second Commission, annex 1.

Article 1; indeed it thinks that a town guarded by these murderous engines could not be considered as undefended.

After an exchange of views between the **Reporter** and Captain **Ottley** the **President** calls for a vote on paragraph 2 of Article 1 which is approved by 22 votes against 5 with 10 abstentions.

The following voted in the affirmative: Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Greece, Haiti, Italy, Nicaragua, Norway, Panama, Paraguay, Salvador, Siam, Sweden, Turkey, Uruguay.

The following voted in the negative: Dominican Republic, Spain, Great Britain, Japan, Portugal.

The following abstained: Germany, United States of America, Ecuador, France, Montenegro, Netherlands, Persia, Roumania, Russia, Serbia.

On the invitation of the **PRESIDENT**, the **Reporter** then reads the reasons for Article 2.

ARTICLE 2

However, when the necessities of military operations require the destruction of military or naval works, depots of arms or of war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, or war vessels in the harbor, the commander of the naval force may himself proceed to said destruction with artillery, if all other means are impossible, and if the local authorities have, after formal summons and after the expiration of a reasonable time of waiting, refused to satisfy these requirements.

Under such circumstances the ports, towns and villages, dwellings or buildings are liable for any unavoidable damages resulting from bombardment.

Article 2 is so closely related to the provision of Article 1, as is apparent from the use of the word "however," which connects it therewith, that a union of the two articles into one was thought of. After mature reflection the committee of examination decided otherwise, in order that the principle laid down in the first article might receive the greater prominence unfettered with any subsidiary consideration.

The first exception to this principle is dealt with in Article 2. It seems to be necessary owing to the special needs of naval warfare. Indeed, whilst in land warfare the belligerent will have the opportunity of taking possession of an undefended place and, without having recourse to bombardment, of proceeding to any destruction there that may serve his military operations, the commander of naval forces will sometimes be obliged, under certain conditions, to destroy with artillery, if all other means are lacking, enemy structures serving military ends, when he has not at his disposal a sufficient landing force or when he is obliged to withdraw speedily; likewise, he will perhaps find himself under the necessity of destroying with artillery in analogous situations hostile war-ships found in a port, even in the case where these war-ships would not be of service in defending the town and when, too, the town is not defended.

On the principle of this first exception everybody was agreed. They also ended by unanimously recognizing that there should be added to [345] the structures which may be destroyed by bombardment when circumstances required, "plant" which can be utilized for the needs of the hostile fleet or army (for example, railway tracks or floating-docks). The broader proposal to add also "supplies" (for example, coal stacks) was withdrawn by its author, as the expression "war *matériel*," contained in this article, satis-

fied him and as the objection was advanced in several quarters that such an amendment would have too broad a range and might jeopardize the real meaning of the prohibition.

But the subcommission was unable to reach an agreement, and attempts in this direction in the committee of examination were equally fruitless with regard to the conditions under which a commander of naval forces before an undefended place might proceed to destroy with artillery military establishments, etc., in the absence, of course, of other less dangerous means of which he could avail himself.

Whilst the majority of the subcommission was of opinion that a bombardment to effect such a destruction must not take place until after a formal summons to the local authorities and only in the case when, after the expiration of a reasonable time of waiting, those authorities refuse themselves to destroy the works, etc., enumerated in Article 2—the military exigencies not exceeding these limits—several technical delegates advanced serious objections to the restrictions imposed on belligerent operations. They pointed out the possibility that a naval force might have to act immediately, lacking the time to give a previous summons or to wait until a reasonable time had passed for the local authorities to comply with the demands of the naval commander. Particularly, it was said, the commander of the naval force should, if necessary, be in a position to attack immediately, with artillery, vessels in the roadstead, in order to prevent their joining a hostile fleet which might be in the neighborhood, if there were any danger of their so doing.

The vote upon this controversy was twenty-one votes in favor of the text presented in the combined project,¹ and six votes in favor of the amendment proposed by the delegation of Great Britain and approved by the delegations of France and Japan, which provides that: "Nevertheless, these ports, towns, villages, habitations or buildings cannot be considered as protected from involuntary damages which might result to them from the destruction of military works, military or naval establishments, depots of arms or war *matériel*, workshops utilized for the needs of the hostile fleet or army, or ships of war in the harbor." There was one abstention. Seventeen States did not respond to the call. After the closing of the debates before the committee of examination, the French delegation presented a new text to be substituted for paragraph 1 of Article 2 as adopted by the subcommission. It is, perhaps, calculated to reconcile the opposing views which, as we have just said, manifested themselves in the subcommission. It is for the Commission to decide upon this subject.

The new French proposition is thus worded:²

Military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor, are not, however, included in this prohibition; these the commander of a naval force may destroy with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

[346] If for imperative military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the preceding case, and

¹ Annex 6.

² Annex B to this day's minutes.

then the commander shall take all due measures in order that the town may suffer as little harm as possible.

On the contrary, there was no debate upon the second paragraph of Article 2; it was not contested that in exceptional cases covered by paragraph 1, the fire may be aimed exclusively at the points therein mentioned; but it is not less true that any damage that is unavoidable, and this is a proper qualification, caused by the bombardment outside those limits, will be borne by the inhabitants of the bombarded towns, the commander of the naval forces incurring no responsibility therefor.

The President sums up the considerations that have just been set forth and explains the essential difference existing between the text of Article 2 proposed by the committee of examination and that proposed by the French delegation.¹ The difference consists in that the French formula provides for the case of imperious military necessity. The discussion is opened on the adoption of the French proposal. There is also another formula proposed by the delegation of Belgium;² but it only says in other words the same thing as the article whose text had been combined by the committee of examination.

The French proposal appearing to be the most complete, his Excellency Count Tornielli proposes to the Commission that it first decide on paragraph 1, which is read and which appears to him to bring out no objections.

His Excellency Keiroke Tsudzuki declares that the delegation of Japan adheres to this provision, under condition, however, that paragraph 2 is also adopted.

The President declares that paragraph 1 of Article 2 is approved with the reservation just indicated by his Excellency the first delegate of Japan. He then reads paragraph 2.

Captain Lacaze takes the floor to explain the reasons that caused the French delegation to make its proposal.³

He first states that, as his Excellency Count Tornielli has already remarked, there is no noticeable difference so far as principle is concerned between the two texts of the committee of examination and the French delegation. Indeed the Commission is unanimously in favor of prohibiting bombardment of undefended towns; but, on the other hand, to lay down a prohibition that is too absolute would be placing commanders of naval forces in a position where it would be impossible to obey it.

It is well to remark also that the period stipulated in Article 2 may, in certain cases, be more apparent than real; the discussion in the committee showed this.

Indeed the naval delegates who had accepted the first text declared that in the cases so well described by Captain OTTLEY in the meeting of July 18 they would consider the town as defended and consequently subject to bombardment. This being so, it is asked whether it would not be better to recognize frankly that there are circumstances where a commander of naval forces could not grant a delay for the destruction of military works, etc., without being lacking in duty towards his country.

[347] Finally, we should consider that the refusal to allow this exception to

¹ Annex B to this day's minutes.

² *Ibid.*

³ *Ibid.*

the general rule would probably have blocked the Convention, for certain great Powers were resolved not to adhere to it save under this condition. The French proposition therefore was really intended not only to take into account certain inevitable necessities of war, but also to offer a compromise formula upon which unanimity might be obtained.

Captain **Ottley**, in the name of the British delegation, declares that he entirely approves the considerations as stated by his French colleague and accepts the French text of Article 2 in its entirety.

His Excellency Mr. **van den Heuvel** states that the second paragraph of Article 2 of the French proposition seems to him to contain a provision of exceptional gravity.

The second paragraph seems to him to remove almost all the effectiveness of the protection contained in the first paragraph. In effect it is equivalent to saying that whenever a commander of naval forces deems himself pressed by circumstances he may accord no delay; the words "imperious necessities" make him the judge of the situation and "of immediate action" permit him to dispense with any delay and even with any summons.

This plan may lead very far. We are dealing not with defended towns, but with open towns occupied not by combatants but by peaceful inhabitants. The question is, whether to permit destruction by bombardment and with suddenness, without any warning, of the public and private depots, not only the installations adapted to serve the fleet and the army but also shipyards, bridges, railway stations, etc. Where is the town which, if bombarded in these circumstances, will not suffer incalculable damage from projectiles that fall on establishments and occupied places, in the streets and accidentally upon numerous neighboring dwellings?

The speaker remarks in conclusion that in the committee of examination only one case was mentioned that was really exceptional, that of the presence of war-ships in an undefended port; and if military necessities require, immediate destruction by bombardment of these ships might be allowed in this case. But this particular hypothesis does not appear to the delegation of Belgium to justify the general provision contained in paragraph 2 of the French proposition.

Captain **Lacaze** desires to point out that the French proposition lays down as a general rule the summons with a reasonable delay; the contrary case is only an exception. We cannot believe that a commander of naval forces would make use of this exceptional right in cases where "imperious necessity" did not constrain him to do so. It may be observed, on the other hand, that in a general way the destruction contemplated by Article 2 is carried out by means of a special material; it is only in quite exceptional cases and only when other action cannot be taken that recourse will be had to the use of artillery, as this involves loss of time and expenditure of munitions.

Finally, the commander of a naval force, far from seeking to proceed without notification, will always have an interest, in order to safeguard his moral responsibility, in effecting such destruction only in accord with the local authorities and in their presence.

His Excellency Mr. **van den Heuvel** is persuaded that the commanders of naval fleets will only use their powers with extreme reserve and that they will always act with great humanity. But the rights of innocent inhabitants

[348] cannot be neglected; they must place limitations upon the liberty of action of military forces. In the cases mentioned by Captain LACAZE bombardment on land would not be permitted. Article 25 of the law of war on land is explicit; it lays down an absolute prohibition notwithstanding that we must have great confidence also in the humanitarian spirit of generals. If it is necessary to authorize sometimes a bombardment by sea of open towns, we should surround such exceptional authorization with precise conditions. A peaceable population cannot be given over without warning and without delay to the terribly fatal consequences in the train of every bombardment.

His Excellency Mr. **Léon Bourgeois** would like to add a few words, for it does not seem possible to him that the French proposition can be thought to be an aggravation of the *status quo*. The reverse is the truth. Indeed, how does the case stand? At present there is no rule protecting undefended ports, towns and villages against the contingency of a bombardment. This protecting rule forbidding bombardment is laid down in the draft Convention. The first paragraph of the French proposal expressly confirms this principle by enunciating the rule of summons and reasonable delay for the exceptions that are allowed. But general discussion has shown that certain Powers could not accept an absolute rule on this point if it were not qualified for certain exceptional cases, especially those of the presence or impending arrival of enemy war-ships in the undefended port. It is quite evident that in the first case the commander of a naval force could not, without being wanting in his duty, grant a delay before destroying the enemy force and that, in the second hypothesis, he may be compelled to proceed immediately to the destruction of works useful to the enemy before the latter's arrival.

The French proposal therefore is intended to reconcile those imperious military necessities which are the exception with the considerations of humanity that have dictated the general rule.

In doing so it contributes in building a practical work acceptable to all and thus facilitates the signature of a convention which will stand as a mark of real progress because it will certainly assure the effective protection of open towns against bombardment.

His Excellency Sir **Ernest Satow**, in closing the discussion, says that it certainly will not occur to any of the members of this assembly who are acquainted with the spirit animating naval officers that a commander can profit by the provision now under discussion to abuse the latitude left to him and thus ignore the superior considerations of humanity. (*Repeated applause.*)

The President then puts to a vote paragraph 2 of Article 2 (French text) which was adopted by 24 votes against 1; there were 10 abstentions.

Voting for: Germany, the United States of America, Argentine Republic, Austria-Hungary, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Dominican Republic, Spain, France, Great Britain, Greece, Japan, Montenegro, Netherlands, Paraguay, Portugal, Roumania, Russia, Salvador, Sweden.

Voting against: Belgium.

Abstentions: Denmark, Ecuador, Haiti, Italy, Norway, Panama, Persia, Siam, Turkey.

[349] He then points out that Article 2 (text of the committee of examination) contains a third provision relating to the question of unintentional dam-

ages that seems to him to be formulated in better legal phraseology in Article 2 of the Belgian proposal.¹ After reading it he proposes that the Commission adopt it. It is so decided. The place for this provision in the body of Article 2 is left to the drafting committee.

ARTICLE 3

Bombardment of ports, towns, villages, dwellings or buildings is admissible, after notice is given, when the furnishing of food or necessary supplies for the immediate needs of the naval force present, after a formal summons given to the local authorities, is refused.

The provisions contained in Article 52 of the regulations respecting laws and customs of war on land have an analogous application as to the requisitions mentioned in paragraph 1.

Upon the invitation of the PRESIDENT, the Reporter then read an explanatory statement regarding Article 3, in the following words:

Article 3 states the second exception to the prohibition contained in Article 1. Although it appeared in the combined text,² his Excellency Count TORNIELLI felt obliged to say at the beginning of the discussion that the initiative of this proposal was not due to the Italian delegation. The delegation of Belgium for its part likewise repudiated this article, which it desired to see disappear entirely, without, however, making any motion to that end. Moreover, the debates did not bear on the existence itself of this exception, which seemed to be considered as a necessary concession to the necessities of naval war, as naval forces are often obliged to procure by means of requisitions provisions and supplies that they cannot do without. Stress was laid on the question, what should be the extent of the requisitions permitted. On this point the Spanish delegation had asked with regard to the proposal of the United States, which spoke of reasonable requisitions, that it be defined what are the requisitions that should be considered as reasonable and a refusal of which would render towns, etc., liable to bombardment. The delegation of Spain proposed at the same time that these requisitions should be limited to the necessary materials and supplies that ships of belligerent Powers might rightfully procure in a neutral port.³ Likewise, his Excellency Vice Admiral MEHEMED PASHA, in the specifying that "the commander of naval forces should not have recourse to bombardment if it is proved that the ports, towns, villages, and dwellings in question are not in a position to furnish provisions or other supplies necessary for the immediate use of the naval force present." His Excellency Count TORNIELLI having proposed to restrict requisitions to such as are "in proportion to the local resources," and his Excellency the first delegate of Belgium having suggested that there would be still other provisions drawn from the Regulations respecting the laws and customs of war on land that should be applied to the requisitions that naval forces might claim, the subcommission, while not deeming itself competent to regulate *ex professo* the question of requisitions for naval war in general, decided to leave to the committee of examination the task of setting forth the common idea expressed in the propositions and amendments which we have just mentioned to you; that is to say, the established rules regarding

¹ Annex B to this day's minutes.

² Annex 6.

³ Annex 2.

requisitions in war on land are equally applicable to requisitions, the refusal of which might lead to a legal bombardment by naval forces.

[350] Hence the addition of the second paragraph of Article 4, which will be combined with the text of the first paragraph, decreeing that the furnishing of provisions or supplies ought to correspond to the *immediate needs of the naval forces present*. Thus the amount of requisitions permitted to naval forces appears sufficiently well-defined, and the analogous application of Article 52 of the above-mentioned Regulations also makes it clear that payments shall, as a matter of course, be made as soon as possible, in cash; if not, they shall be vouched for by receipts. It is likewise agreed that the requisitions shall not impose upon the populations the obligation to take part in the operations of war against their own country.

After this reading the **President** feels impelled to remark to the Commission that the text adopted by the committee of examination seemed less definite than the formula presented by the Belgian delegation;¹ he reads paragraph 1 of this provision, which provokes no discussion, and is, in consequence considered as adopted.

The **President** then reads paragraph 2, which is worded as follows: "The extent of these requisitions and the conditions upon which they may be made are regulated by the analogous application of Article 52 of the Regulations respecting the laws and customs of war on land." He remarks that the words "by the analogous application of" were printed by error in the text of the Belgian formula which had been distributed. He asks if anyone desires to make any remarks on the subject of the provision which he has just read.

His Excellency Sir **Ernest Satow** desires to restore the words "by the analogous application of Article 52 of the Regulations, etc.," to the Belgian proposition. There is in fact no absolute identity between the circumstances of war on land and those of naval war; however, his objection is rather to the form of a pure and simple application of Article 52 of the Convention of 1899.

His Excellency Mr. **Hagerup** explains that the reason why the committee of examination adopted the formula printed in the table was the difficulty of finding a text containing all the necessary provisions. It is, moreover, a rather common practice to refer, for the application of a conventional provision, to a provision in another treaty.

His Excellency Mr. **van den Heuvel** states that in his opinion the question here is not one of simple editing. The principle is set forth in the first paragraph of the Belgian proposition; regarding the extent and conditions of lawful requisitions, reference is made in paragraph 2 to the provisions of Article 52.

Mr. **Louis Renault** remarks that if the reference to Article 52 of the said Regulations does not present any fundamental difficulty, it presents an obstacle in form. A convention should be self-sufficient. It will serve, in fact, as precise and complete instructions to the commander of naval forces, who should not be required to refer to the texts regarding war on land. From a practical point of view, the simplest proceeding would be to repeat in the article the provisions of Article 52 making the necessary changes. This duty should devolve upon the committee of examination.

The **President** asks if the repetition of the provisions of Article 52 proposed by Mr. **LOUIS RENAULT** satisfies the British delegation.

¹ Annex B to this day's minutes.

His Excellency Sir Ernest Satow accepts this suggestion.

[351] The President notes this fact and says that the drafting committee can insert the article in question in the second paragraph of Article 3 of the draft Convention.

The PRESIDENT then reads Article 4 and requests the Reporter to explain the reasons for this provision:

ARTICLE 4

Bombardment of undefended ports, towns, villages, dwellings or buildings for non-payment of a money contribution is prohibited.

The Reporter reads the following explanatory statement:

Article 4 was accepted without discussion.

It corresponds in a way to the last paragraph of the original proposals of the United States and the Netherlands,¹ according to which bombardment for non-payment of a ransom is forbidden. In the preparatory committee it was agreed to omit this clause, which, contrary to the views of the authors of the proposals mentioned, was believed to suggest that a demand for ransom is not prohibited in principle. It was therefore preferred to make no allusion to ransom and to forbid a bombardment for the purpose of obtaining money contributions, a prohibition which also precludes *a fortiori* bombardment for non-payment of a ransom. Nevertheless, even this allusion to money contributions is not intended, according to the explanations given in the subcommission, to give naval forces a right to demand such contributions. On the contrary, this question was left open as not being cognizable by the Third Commission. The subcommission only desired to lay it down that even in a case where money contributions might be required, a bombardment undertaken with the design of imposing them by force should not be permitted.

The President remarks that there exists only a difference in wording between the text of the committee and that proposed by the Belgian delegation;² unless there is some objection, the choice of the definitive text will be confided to the drafting committee.

It is so decided.

Chapter II (General provisions) is then taken up.³

The Reporter reads the following explanatory statement:

The articles of the *second chapter* are applicable to every bombardment, and correspond to the provisions contained in Articles 26-28 of the Regulations of 1899. The subcommission thought it should reproduce these, so that the whole matter would be regulated in the project submitted to the Conference. At the same time, advantage was taken of the opportunity to define and supplement in certain particulars the general rules on bombardment when undertaken by naval forces.

Thus, with respect to Article 5, besides a small addition accepted on the motion of the Greek delegation with the object of assuring *historic monuments* the protection due them in case of bombardment, a provision was added at the end on the subject of the signs with which the inhabitants shall mark the buildings, etc., that should be spared. In view of the dif-

¹ Annexes 1 and 4.

² Annex B to this day's minutes.

³ *Ibid.*

ficulty that may lie, in case of bombardment by naval forces, in the way of a previous notification on the part of the inhabitants of the signs which they are going to use to mark the protected buildings, it seemed that the corresponding provision of the Regulations on land warfare ought to be supplemented in the project before us.

[352] The request that an understanding be reached on this point in order to fix in advance and once for all the sign to be used, was made by the delegation of Russia and supported by his Excellency Count **TORNIELLI**, who had already filed a similar proposal with the preparatory committee. As no objection was raised in the Commission, the question was referred to the committee of examination. But there a difference of opinion arose: some members, especially the representatives of the United States and Japan, were averse to deciding in advance upon a distinctive sign; they said that there could not be any one sign that could be used and be recognizable in all cases; that a sign fixed upon in advance might not be found at hand at a given time by the inhabitants, who would then see themselves deprived of the means of marking buildings for protection; and that abuses would be possible, as has happened with the distinctive sign of the Geneva Convention.

The majority of the subcommission (14 votes against 3) did not take this view. If, for bombardment by naval forces, it was needful, in order to avoid delays prejudicial to the fleet, not to admit the necessity of a previous notification by the inhabitants as to the sign that they would employ, it seemed indispensable that this sign be fixed for all time. With the sign once settled upon, the inhabitants of towns liable to bombardment from the sea would certainly not fail to make timely provision, and the fault would be theirs if they did not take steps to that end. As to abuses, these might happen to any sign. It was therefore decided that a small committee composed of Vice Admiral **ARAGO**, Captain **CASTIGLIA**, and Captain **BEHR** should devise a distinctive sign that can be easily used in all circumstances and is adapted for being visible anywhere and for being lighted up at night. The formula proposed by the committee is to be found at the end of Article 5.

The committee also took care to explain "that the number and the disposition of the panels on each building to be protected would be determined by the requirement of rendering them easily visible from any one of the directions whence they might be struck by the artillery of enemy vessels."

Article 5 having given rise to no discussion, the **President** declares that this entire provision is approved.

ARTICLE 6

The commander of the attacking naval forces before commencing bombardment must do his utmost to warn the authorities, if the military situation permits.

Article 6 is then taken up, for which the **Reporter** states the reasons in the following terms:

Article 6 owes its present form to a wording adopted by the committee of examination on the basis of the discussion that took place in the subcommission in consequence of an argument delivered by Captain **OTTLEY** and supported by the Japanese delegation. It was said that the rule under which the commander of naval forces should in all circumstances do his utmost to warn the authorities before commencing a bombardment was too

stringent and might in some cases place the naval forces at a disadvantage. There might be circumstances in which the admiral's duty will require him to destroy as speedily as possible an enemy fortress or arsenal, and the success of such operations might be endangered by an obligation to give a previous warning. But it was unanimously recognized that only an exceptional military situation should free the admiral from this obligation. It was with this understanding that the principle of the proposal made by his

Excellency the first delegate of Roumania and amended by Rear Admiral [353] SIEGEL was accepted by the Commission, which charged the committee of examination to find a formula embodying with the rule laid down in Article 6 an exception for cases where the military situation does not permit of a previous warning.

Article 6 not giving rise to any objection, the President thinks there will undoubtedly be no objection to the reference of the two texts (those of the committee and Belgian delegation¹) to the committee of examination.

He then reads Article 7² which is only a reproduction of Article 28 of the Regulations upon war on land.

He states that this final article of the draft Convention relative to bombardment by naval forces of ports, towns and villages in time of war is adopted.³

The President then speaks as follows:

I am happy, gentlemen, to have been able, thanks to your spirit of conciliation and effective cooperation, to bring this discussion to a successful issue.

The serious and difficult question upon which we have to-day reached an agreement, was bequeathed to us by the First Conference. My predecessor, the late Count NIGRA, with the courage of his high humanitarian convictions, displayed, until the very end, the greatest energy in his efforts to have the Conference come to a decision in this respect. Now that we may almost say that the goal has been reached, my thought turns with deep emotion to his revered memory. (*Unanimous and prolonged applause.*)

The meeting adjourns at 5 o'clock.

[354]

Annex A

REGULATIONS CONCERNING THE BOMBARDMENT BY NAVAL FORCES IN TIME OF WAR

REPORT TO THE COMMISSION⁴

The first subcommission of the Third Commission was assigned two of the questions devolving upon this Commission which were among the subjects appearing upon the program communicated to the Powers by the Imperial Russian Government, that is to say:

¹ Annex B to this day's minutes.

² *Ibid.*

³ See the text submitted to the Conference, vol. i, pp. 118-119 [118-119]. For the vote upon the whole draft, see vol. i, p. 87 [90].

⁴ The report was presented by a committee of examination created by the first subcommission and *presided over* by his Excellency Mr. HAGERUP (Norway), president of that subcommission. The committee was composed of the following members: Rear Admiral SIEGEL (Germany), Rear Admiral SPERRY (United States), Rear Admiral HAUS

1. Laying of mines.
2. Bombardment by naval forces of ports, towns and villages.

Although the first of these questions was taken up first, the subcommission has at last arrived at conclusions respecting the second which are susceptible of being submitted to the vote of the Commission; by rendering an immediate report thereupon, it is its intention to make it possible for the two questions to be treated separately. In the meantime the subcommission will continue to study the question of mines, upon which it hopes to shortly obtain equally satisfactory results.

I

The question of the bombardment of ports, towns and villages by naval forces incidentally engaged the attention of the First Peace Conference. The Conference did not succeed in disposing of it in a positive manner but instead passed, by an almost unanimous vote of the Powers there represented, a resolution which appears in the Final Act of 1899 and reads as follows:

The Conference utters the *vœu* that the proposal to settle the question of the bombardment of ports, towns and villages by a naval force may be referred to a subsequent conference for consideration.

Indeed, as his Excellency the first plenipotentiary of Belgium has rightly reminded the Third Commission, the very useful codification of the laws [355] and customs of war on land by the First Conference on the basis already prepared in 1874 by the resolutions of the Conference of Brussels would appear incomplete if there were not also settled the question of bombardment by naval forces of ports, towns and villages; a question so intimately connected with the one settled by the Regulations of 1899 on the subject of bombardment by land forces of undefended towns, villages and habitations.

Without ignoring the differences which may exist in respect of bombardment between war on land and naval war, it cannot be denied that when bombardment is directed by naval forces against the land the operation is not a purely naval one. Whatever it may be, the fundamental principles ruling bombardment by land forces of undefended towns, villages and habitations should, it seems, be equally applied to bombardment of such ports, towns, villages, etc., by belligerent naval forces, since the same reasons which dictated the prohibition laid down in Articles 25 *et seq.* of the Regulations mentioned exist also here in nearly their full force. It is necessary to limit the means that belligerents may employ to injure their enemy in a degree corresponding with the exigencies of modern warfare.

Apparently, considerations of this kind led the Institute of International Law, when it considered the question of bombardment of undefended towns by naval forces at its session in Venice, to apply to it, in principle, the provisions

(Austria-Hungary), his Excellency Mr. VAN DEN HEUVEL (Belgium), Colonel TING (China), Rear Admiral SCHELLER (Denmark), Captain CHACÓN (Spain), Rear Admiral ARAGO and Captain LACAZE (France), Captain OTTLEY (Great Britain), Professor GEORGIOS STREIT, *reporter* (Greece), his Excellency Mr. PIERRE HUDICOURT (Haiti), his Excellency Count TORNIELLI and Captain CASTIGLIA (Italy), Rear Admiral HAYAO SHIMAMURA (Japan), his Excellency Vice Admiral RÖELL (Netherlands), Captain STURDZA (Roumania), Captain BEHR (Russia), his Excellency Mr. HAMMARSKJÖLD and Captain G. AF KLINT (Sweden), and his Excellency Vice Admiral MEHEMED PASHA (Turkey).

on bombardment voted by the Institute in its regulations concerning war on land. This is seen in the very form given by the Institute to its Venice resolutions on bombardment, for it contented itself with referring to the provisions contained in its regulations concerning war on land, and merely added thereto some special rules that seemed requisite to give a certain latitude demanded by the needs of naval warfare.

It is also this same fundamental idea that seemed to inspire the proposals submitted to the subcommission by different delegations, all of which remind us of the analogies existing between the two cases.

The proposals presented to the subcommission are five in number—one each from the United States, Spain, Italy, Netherlands, and Russia.¹ The last four are grafted on the proposal of the delegation of the United States, itself borrowed from the Naval Code of the United States of 1900; they all have one common point of departure. It consequently seemed possible and useful to combine these different proposals into a single text to be submitted in the name of all the above-mentioned delegations to the consideration of the subcommission. His Excellency Count TORNIELLI took the initiative in thus greatly facilitating the special business of the subcommission; and in the two meetings at which he presided, to which the members of the bureau of the subcommission² were invited besides the representatives designated for this purpose by the delegations which had drawn up the proposals, a single text was agreed upon to serve as a basis for the deliberations of the subcommission.

This combined project, which was presented in the name of the five delegations,³ was discussed as a whole and in detail by the subcommission, which adopted most of it unanimously and made no very considerable changes in its substance. The duty of the final drafting and coordination of the texts [356] into one project was entrusted to a committee of examination composed of the bureaus of the Third Commission and the subcommission, as well as the naval delegates of the Powers that had submitted proposals or amendments or that desired to be represented. This work, which appears at the end of the present report, was submitted by the first subcommission to the approval of the Third Commission.

II

In conformity with the suggestions made by his Excellency Mr. TCHARYKOW, the provisions voted were separated into two *chapters*—one containing the general rules applicable to every bombardment, the other dealing with the prohibition of bombardment of undefended ports, towns, villages, etc., as well as with the exceptions which this prohibition carries in naval war. But we thought it best to commence with this second chapter, thus inverting the order in the combined project, in order that we might be able to place at the beginning Article 4 of the combined project which enunciates the ruling principle of this whole subject.

The first article of the project which we have the honor to submit to you

¹ Annexes 1-5.

² Thus the following attended these meetings: Rear Admiral SPERRY (United States), his Excellency Mr. DE VILLA URRUTIA (Spain), Mr. GUIDO FUSINATO (Italy), his Excellency General Jonkheer DEN BEER POORTUGAEL (Netherlands), his Excellency Mr. TCHARYKOW (Russia), and in addition his Excellency Mr. HAGERUP (Norway), his Excellency Mr. VAN DEN HEUVEL (Belgium), Mr. GEORGIOS STREIT (Greece).

³ Annex 6.

corresponds in its first paragraph to Article 25 of the Regulations of 1899 respecting the laws and customs of war on land; it extends to naval forces the prohibition against bombardment of undefended ports, towns, villages, dwellings, or buildings. We did not think it best to specify, as did the original propositions of the United States and Netherlands,¹ that the prohibition relates to undefended "and unfortified" towns, etc. In the first place, it should be firmly established that the existence of fortifications does not of itself suffice to permit the bombardment of the place fortified if the fortifications are not defended; and, secondly, every legitimate anxiety seems to be swept away by the provision of Article 2 which, even in the case of undefended towns, etc., concedes the possibility of directing a bombardment against them for the purpose of destroying by cannon fire, under certain conditions, military works, or military or naval establishments, and consequently any fortifications.

With respect to the meaning of "undefended"—and the attention of the subcommission was particularly drawn to this point by his Excellency General Jonkheer DEN BEER POORTUGAEL and Captain BURLAMAQUI, who considered especially the case of a town defended only on the side of the sea—we believed that we should refrain from formulating a definition in the text itself of the project, in view of the difficulty of defining precisely this purely negative idea. The identical wording of the Regulations on war on land, we may add, has not given rise to controversy on this head. But the subcommission expressly referred to the explanations given in the meeting of July 18 of the first subcommission of the Third Commission, in order that they may serve as an interpretation of its text. His Excellency General DEN BEER POORTUGAEL drew a particular distinction between the defense of a coast and the defense of a town situated near the coast. The defense of the coast might necessitate firing on the instruments themselves of such defense, but a right of bombarding the town which the defense of the coast might indirectly serve, unless the town itself were defended, should not be granted.

Another question along the same line was examined. It was common to the two topics assigned to this subcommission, and was settled by the technical committee charged with the final drafting of the regulations concerning the laying of mines. The question was whether a town should be considered as defended in the sense of paragraph 1 by the sole fact that automatic [357] submarine contact mines are anchored off its harbor. It seemed that the question should receive a negative answer, as the sole fact of the existence of automatic contact mines before a place could not justify a bombardment of that place. Nevertheless, there was some hesitation as to the phrasing to give this particular idea, and some members of the committee expressed reservations with respect to the text adopted as well as to the usefulness of a declaration on this subject. The majority of the committee believed that this point should be expressly mentioned, and there was unanimous agreement that the most natural place for the stipulation was in the provisions concerning the bombardment of undefended places. Hence paragraph 2 of Article 1.

Article 2 is so closely related to the provision of Article 1, as is also apparent from the use of the word "however," which connects it therewith, that a union of the two articles into one was thought of. After mature reflection the committee of examination decided otherwise, in order that the principle laid down

¹ Annexes 1 and 4.

in the first article might receive the greater prominence unfettered with any subsidiary consideration.

The first exception to this principle is dealt with in Article 2. It seems to be necessary owing to the special needs of naval warfare. Indeed, whilst in land warfare the belligerent will have the opportunity of taking possession of an undefended place and, without having recourse to bombardment, of proceeding to any destruction there that may serve his military operations, the commander of naval forces will sometimes be obliged, under certain conditions, to destroy with artillery, if all other means are lacking, enemy structures serving military ends, when he has not at his disposal a sufficient landing force or when he is obliged to withdraw speedily; likewise, he will perhaps find himself under the necessity of destroying with artillery in analogous situations hostile war-ships found in a port, even in the case where these war-ships would not be of service in defending the town and when, too, the town is not defended.

On the principle of this first exception everybody was agreed. They also ended by unanimously recognizing that there should be added to the structures which may be destroyed by bombardment when circumstances required, "plant" which can be utilized for the needs of the hostile fleet or army (for example, railway tracks or floating-docks). The broader proposal to add also "supplies" (for example, coal stacks) was withdrawn by its author, as the expression "*war matériel*," contained in this article, satisfied him and as the objection was advanced in several quarters that such an amendment would have too broad a range and might jeopardize the real meaning of the prohibition.

But the subcommission was unable to reach an agreement, and attempts in this direction in the committee of examination were equally fruitless with regard to the conditions under which a commander of naval forces before an undefended place might proceed to destroy with artillery military establishments, etc., in the absence, of course, of other less dangerous means of which he could avail himself.

Whilst the majority of the subcommission was of opinion that a bombardment to effect such a destruction must not take place until after a formal summons to the local authorities and only in the case when, after the expiration of a reasonable time of waiting, those authorities refuse themselves to destroy the works, etc., enumerated in Article 2—the military exigencies not exceeding these limits—several technical delegates advanced serious objections to the restrictions imposed on belligerent operations. They pointed out the possibility that a naval force might have to act immediately, lacking the time to give a previous summons or to wait until a reasonable time had passed for the local authorities to comply with the demands of the naval commander. Particularly, it was said, the commander of the naval force should, if necessary, be in a position to attack immediately, with artillery, vessels in the roadstead, in order to prevent their joining a hostile fleet which might be in the neighborhood, if there were any danger of their so doing.

The vote upon this controversy was twenty-one votes in favor of the text presented in the combined project, and six votes in favor of the amendment proposed by the delegation of Great Britain and approved by the delegations of France and Japan, which provides that: "nevertheless, these ports, towns, villages, dwellings or buildings cannot be considered as protected from involuntary damages which might result to them from the destruction of military works,

military or naval establishments, depots of arms or war *matériel*, workshops utilized for the needs of the hostile fleet or army, or ships of war in the harbor." There was one abstention. Seventeen States did not respond to the call. After the closing of the debates before the committee of examination, the French delegation presented a new text to be substituted for paragraph 1 of Article 2 as adopted by the subcommission. It is, perhaps, calculated to reconcile the opposing views which, as we have just said, manifested themselves in the subcommission. It is for the Commission to decide upon this subject.

The new French proposition is thus worded:¹

Military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor, are not included in this prohibition; these the commander of a naval force may destroy with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

If for imperative military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the preceding case, and then the commander shall take all due measures in order that the town may suffer as little harm as possible.

On the contrary, there was no debate upon the second paragraph of Article 2; it was not contested that in exceptional cases, covered by paragraph 1, the fire may be aimed exclusively at the points therein mentioned; but it is not less true that any damage that is unavoidable, and this is a proper qualification, caused by the bombardment outside those limits, will be borne by the inhabitants of the bombarded towns, the commander of the naval forces incurring no responsibility therefor.

Article 3 states the second exception to the prohibition contained in Article 1. Although it appeared in the combined text, his Excellency Count TORNIELLI felt obliged to say at the beginning of the discussion that the initiative of this proposal was not due to the Italian delegation. The delegation of Belgium for its part likewise repudiated this article, which it desired to see disappear entirely, without, however, making any motion to that end. Moreover, the debates did not bear on the existence itself of this exception, which seemed to be considered as a necessary concession to the necessities of naval

war, as naval forces are often obliged to procure by means of requisitions [359] provisions and supplies that they cannot do without. Stress was laid on the question. what should be the extent of the requisitions permitted. On this point the Spanish delegation had asked with regard to the proposal of the United States, which spoke of reasonable requisitions, that definition be given of requisitions that should be considered as reasonable and a refusal of which would render towns, etc., liable to bombardment.² The delegation of Spain proposed at the same time that these requisitions should be limited to the necessary materials and supplies that ships of belligerent Powers might rightfully procure in a neutral port. Likewise, his Excellency Vice Admiral MEHEMED PASHA, in the name of the Ottoman delegation, asked for the addi-

¹ Annex 7.

² Annex 2.

tion of a paragraph specifying that "the commander of naval forces should not have recourse to bombardment if it is proved that the ports, towns, villages, and dwellings in question are not in a position to furnish provisions or other supplies necessary for the immediate use of the naval force present." His Excellency Count TORNIELLI having proposed to restrict requisitions to such as are "in proportion to the local resources," and his Excellency the first delegate of Belgium having suggested that there would be still other provisions drawn from the Regulations respecting the laws and customs of war on land that should be applied to the requisitions that naval forces might claim, the subcommission, while not deeming itself competent to regulate *ex professo* the question of requisitions for naval war in general, decided to leave to the committee of examination the task of setting forth the common idea expressed in the propositions and amendments which we have just mentioned to you; that is to say, the established rules regarding requisitions in war on land are equally applicable to requisitions, the refusal of which might lead to a legal bombardment by naval forces.

Hence the addition of the second paragraph of Article 4, which will be combined with the text of the first paragraph, decreeing that the furnishing of provisions or supplies ought to correspond to the *immediate needs of the naval forces present*. Thus the amount of requisitions permitted to naval forces appears sufficiently well-defined, and the analogous application of Article 52 of the above-mentioned Regulations also makes it clear that payments shall, as a matter of course, be made as soon as possible, in cash; if not, they shall be vouched for by receipts. It is likewise agreed that the requisitions shall not impose upon the populations the obligation to take part in the operations of war against their own country.

Article 4 was accepted without discussion.

It corresponds in a way to the last paragraph of the original proposals of the United States and the Netherlands,¹ according to which bombardment for non-payment of a ransom is forbidden. In the preparatory committee it was agreed to omit this clause, which, contrary to the views of the authors of the proposals mentioned, was believed to suggest that a demand for ransom is not prohibited in principle. It was therefore preferred to make no allusion to ransom and to forbid a bombardment for the purpose of obtaining money contributions, a prohibition which also precludes *a fortiori* bombardment for non-payment of a ransom. Nevertheless, even this allusion to money contributions is not intended, according to the explanations given in the subcommission, to give naval forces a right to demand such contributions. On the contrary, this question was left open as not being cognizable by the Third Commission. The subcommission only desired to lay it down that even in a case where money contributions might be required, a bombardment undertaken with the design of imposing them by force should not be permitted.

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III

The articles of the second chapter are applicable to every bombardment, and correspond to the provisions contained in Articles 26 to 28 of the Regulations respecting the laws and customs of war on land adopted by the First Con-

¹ Annexes 1 and 4.

ference. The Commission thought it should reproduce these, so that the whole matter would be regulated in the project submitted to the Conference. At the same time, advantage was taken of the opportunity to define and supplement in certain particulars the general rules on bombardment when undertaken by naval forces.

Thus, with respect to Article 5, besides a small addition accepted on the motion of the Greek delegation with the object of assuring *historic monuments* the protection due them in case of bombardment, a provision was added at the end on the subject of the signs with which the inhabitants shall mark the buildings, etc., that should be spared. In view of the difficulty that may lie, in case of bombardment by naval forces, in the way of a previous notification on the part of the inhabitants of the signs which they are going to use to mark the protected buildings, it seemed that the corresponding provision of the Regulations on land warfare ought to be supplemented in the project before us.

The request that an understanding be reached on this point in order to fix in advance and once for all the sign to be used, was made by the delegation of Russia and supported by his Excellency Count TORNIELLI, who had already filed a similar proposal with the preparatory committee. As no objection was raised in the Commission, the question was referred to the committee of examination. But there a difference of opinion arose: some members, especially the representatives of the United States and Japan, were averse to deciding in advance upon a distinctive sign; they said that there could not be any one sign that could be used and be recognizable in all cases; that a sign fixed upon in advance might not be found at hand at a given time by the inhabitants, who would then see themselves deprived of the means of marking buildings for protection; and that abuses would be possible, as has happened with the distinctive sign of the Geneva Convention.

The majority of the subcommission (14 votes against 3) did not take this view. If, for bombardment by naval forces, it was needful, in order to avoid delays prejudicial to the fleet, not to admit the necessity of a previous notification by the inhabitants as to the sign that they would employ, it seemed indispensable that this sign be fixed for all time. With the sign once settled upon, the inhabitants of towns liable to bombardment from the sea would certainly not fail to make timely provision, and the fault would be theirs if they did not take steps to that end. As to abuses, these might happen to any sign. It was therefore decided that a small committee composed of Vice Admiral ARAGO, Captain CASTIGLIA, and Captain BEHR should devise a distinctive sign that can be easily used in all circumstances and is adapted for being visible anywhere and for being lighted up at night. The formula proposed by the committee is to be found at the end of Article 5.

The committee also took care to explain "that the number and the disposition of the panels on each building to be protected would be determined by the requirement of rendering them easily visible from any one of the directions whence they might be struck by the artillery of enemy vessels."

Article 6 owes its present form to a wording adopted by the committee of examination on the basis of the discussion that took place in the subcommission in consequence of an argument delivered by Captain OTTLEY and supported by the Japanese delegation. It was said that the rule under which the [361] commander of naval forces should in all circumstances do his utmost to

warn the authorities before commencing a bombardment was too stringent and might in some cases place the naval forces at a disadvantage. There might be circumstances in which the admiral's duty will require him to destroy as speedily as possible an enemy fortress or arsenal, and the success of such operations might be endangered by an obligation to give a previous warning. But it was unanimously recognized that only an exceptional military situation should free the admiral from this obligation. It was with this understanding that the principle of the proposal made by his Excellency the first delegate of Roumania and amended by Rear Admiral SIEGEL was accepted by the Commission, which charged the committee of examination to find a formula embodying with the rule laid down in Article 6 an exception for cases where the military situation does not permit of a previous warning.

Finally, Article 7 is merely a repetition of Article 28 of the Regulations on land warfare. The transposition of the word "even," proposed by Mr. RENAULT, is only a change in phrasing.

Such, gentlemen, is the project which is presented by the subcommission for the approval of the Commission, in the form which was given to it by the committee of examination. As it appears from all the foregoing, outside of the above-mentioned hesitancy regarding paragraph 2 of Article 1, there were but two provisions among those submitted for your approval which in the subcommission were accepted by only a majority vote, on the subject of which it will be necessary for the Commission to arrive at conclusions looking toward a unanimous vote, *viz.*:

1. The question of the necessary summons to the inhabitants, with a reasonable time limit, to themselves proceed to the destruction of military works, etc. (Article 2); and

2. The question of the ruling regarding visible signs indicating edifices, etc., rendered immune by Article 5.

It only remains for your reporter, who appeals to your indulgence, to heartily express his most sincere gratitude for the high mark of confidence which the Commission has been good enough to bestow upon him by entrusting him with the report of the subcommission on this delicate matter.

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Annex B

TEXTS SUBMITTED TO THE DELIBERATIONS OF THE COMMISSION RESPECTING BOMBARDMENT BY NAVAL FORCES

TEXT ADOPTED BY THE COMMITTEE OF EXAMINATION (See Report)	AMENDMENT PRESENTED BY THE FRENCH DELEGATION AFTER THE CLOSE OF THE DEBATES IN COMMITTEE OF EXAMINATION	FORMULAS PRESENTED BY THE DELEGATION OF BELGIUM AFTER THE CLOSE OF THE DEBATES IN THE COMMITTEE OF EXAMINATION
<p>CHAPTER I</p> <p><i>The bombardment of undefended ports, towns, villages, etc.</i></p>		
<p>ARTICLE 1</p> <p>It is forbidden to bombard by naval forces undefended ports, towns, villages, dwellings or buildings.</p> <p>A town is not considered defended by the sole fact that submarine mines are anchored off the harbor.</p>		
<p>ARTICLE 2</p> <p>However, when the necessities of military operations require the destruction of military works, military or naval establishments, depots of arms or of war <i>matériel</i>, workshops or plant which could be utilized for the needs of the hostile fleet or army, or war vessels in the harbor, the commander of the naval force may himself proceed to said destruction with artillery, if all other means are impossible, and if the local authorities have, after formal summons and after the expiration of a reasonable time of waiting, refused to satisfy these requirements.</p>	<p>ARTICLE 2</p> <p>Military works, military or naval establishments, depots of arms or war <i>matériel</i>, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor, are not, however, included in this prohibition; these the commander of a naval force may destroy with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.</p> <p>If for imperative military reasons immediate action is necessary, and no delay can be</p>	<p>ARTICLE 2</p> <p>However, when the necessities of military operations require the destruction of military works . . . and when the local authorities, warned by a formal summons, shall not have effected this destruction within a reasonable time, the commander of the naval forces may proceed therewith, even with artillery, if it is impossible to have recourse to other means.</p> <p>He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.</p>

TEXT ADOPTED BY THE COMMITTEE OF EXAMINATION (See Report)

Under such circumstances the ports, towns, and villages, dwellings or buildings are liable for any unavoidable damages resulting from bombardment.

ARTICLE 3

Bombardment of ports, towns, villages, dwellings or buildings is admissible, after notice is given, when the furnishing of food or necessary supplies for the immediate needs of [363] the naval force present, after a formal summons given to the local authorities, is refused.

The provisions contained in Article 52 of the Regulations respecting laws and customs of war on land have an analogous application as to the requisitions mentioned in paragraph 1.

ARTICLE 4

Bombardment of undefended ports, towns, villages, dwellings or buildings for non-payment of a money contribution is prohibited.

CHAPTER II

General provisions

ARTICLE 5

In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as pos-

AMENDMENT PRESENTED BY THE FRENCH DELEGATION AFTER THE CLOSE OF THE DEBATES IN COMMITTEE OF EXAMINATION

allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the preceding case, and then the commander shall take all due measures in order that the town may suffer as little harm as possible.

FORMULAS PRESENTED BY THE DELEGATION OF BELGIUM AFTER THE CLOSE OF THE DEBATES IN THE COMMITTEE OF EXAMINATION

ARTICLE 3

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings or buildings may be commenced, if the local authorities, after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

The extent of these requisitions and the conditions upon which they may be made are regulated by the analogous application of Article 52 of the Regulations respecting the laws and customs of war on land.

ARTICLE 4

The bombardment of undefended ports, towns, villages, dwellings or buildings for the non-payment of money contributions is forbidden.

TEXT ADOPTED BY THE COMMITTEE OF EXAMINATION (See Report)

sible historic monuments, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large rectangular panels, made of wood or of cloth, divided diagonally into two colored triangular portions—the upper portion black, the lower portion white.

ARTICLE 6

The commander of the attacking naval forces before commencing bombardment must do his utmost to warn the authorities, if the military situation permits.

ARTICLE 7

It is forbidden to give over to pillage a town or place even when taken by storm.

AMENDMENT PRESENTED BY THE FRENCH DELEGATION AFTER THE CLOSE OF THE DEBATES IN COMMITTEE OF EXAMINATION

FORMULAS PRESENTED BY THE DELEGATION OF BELGIUM AFTER THE CLOSE OF THE DEBATES IN THE COMMITTEE OF EXAMINATION

ARTICLE 6

If the military situation permits, the commander of the attacking naval force, before commencing the bombardment, must do what he can to warn the authorities.

FOURTH MEETING

AUGUST 28, 1907

His Excellency Count Tornielli presiding.

The meeting opened at 2:30 o'clock.

The minutes of the meeting of August 8 are approved.

On the request of the President Mr. Georgios Streit (reporter) reads the report to the Commission,¹ which has already been distributed.

The President recalls the reason for the meeting: It is to decide whether the regulations of the laying of mines by neutrals does not exceed the competence of the Commission.

The floor is given to his Excellency Vice Admiral Jonkheer Röell who reads the following address:

The question upon which we are called to express our opinion is as follows:

Does the Russian program as a whole permit us to deal with the laying of mines by neutrals?

On this point I have the honor to observe that having before us Article 3 of the Russian program which contains "elaboration of a convention relating to the laws and customs of maritime war concerning: special operations of maritime war, such as . . . laying of torpedoes, etc.," and which mentions the "rights and duties of neutrals," the answer to this question should, in my view, be affirmative, because the "operations of maritime war" are not exclusively acts of belligerents but also, I think, measures that other States may be obliged to take in their territorial waters in order to prevent the war from extending to their waters and in order that none of the belligerents carries out any operations of war there. This certainly relates to the maritime war mentioned in the Russian program; the two clauses that are inserted there relative to the "placing of torpedoes in war" and "the rights and the duties of neutrals" are mutually complementary and show that, in the mind of the illustrious author of this program, everything that concerns neutrals with regard to laying submarine mines should be dealt with, although the word "neutrals" is not mentioned.

On the other hand, when I see that the question of the use of automatic contact mines to establish or maintain a commercial blockade has been well [365] and duly treated by the committee of examination on mines, while blockade has not even been mentioned in the Russian program, and that nevertheless blockade has been included in the work of the Second Commission, I do not see why the question of the laying of mines by neutrals, which is so intimately connected with that of the laying of mines by belligerents, should be excluded from the deliberations of the Third Commission.

I ought also to say a few words to show what would be the position of

¹ Annex to this day's minutes.

neutrals and the condition of navigation in general, if the result of the Conference were a convention that would regulate the laying of mines by belligerents, and would not occupy itself with that effected by neutrals.

It is pretended that in this case the right of neutrals would remain as it exists at present; to wit, that they would be free to do what they like in their territorial waters. But I allow myself to remark that in my opinion such a liberty is very dangerous for the small States, with a convention on the laying of mines by belligerents binding them by all sorts of rules and prohibitions.

But suppose that there exists no restriction on the right of neutrals to lay anchored or unanchored mines. What might then happen?

During the civil war in the United States of America we have seen the secessionists cast floating mines in the Mississippi in order to damage the vessels of the Federal navy. A neutral world would have the right to do something like that, if a ship of a belligerent tried to violate its neutrality, and if it had no other means at its disposal to prevent it. For example, it throws floating mines into the entrance of a river and thus makes peaceable navigation dangerous in the sea where this river empties. Would that be a good result of this Conference of Peace? I am certain that all here present will answer "No, a thousand times no." Moreover in this humanitarian work it is necessary to prevent such acts of barbarism; and in order to do so, I repeat that it is necessary that in a convention regulating the laying of mines, or in the report accompanying it, it be clearly stated that the resolutions are applicable alike to mines placed by neutrals and belligerents.

His Excellency Sir **Ernest Satow** expresses himself in the following terms:

The first question for the Commission is the following: Are we to understand the laying of mines by neutrals, from the words "operations of maritime war, such as bombardment of ports, towns and villages by a naval force, laying of mines, etc.?"

At first sight it does not appear that the words "operations of war" have reference to other operations than those undertaken by belligerents. Then comes the second question. The Russian program says specifically in another paragraph "the rights and duties of neutrals at sea, including questions of contraband, the status of belligerent vessels in neutral ports, destruction through necessity of neutral merchantmen captured as prizes."

Is the question of the right of neutrals to lay mines as a means of defending their neutrality included in this category of the rights and the duties of neutrals at sea?

It is certain that neutrals are not forbidden to take other measures to protect their neutrality; consequently it would seem that this Conference is [366] competent to discuss this question; the question, however, is not included in the list of questions submitted to the Third Commission by the Conference in its plenary meeting of June 19. It would be required therefore, in order that the question may be discussed by the Third Commission or by one or other of its two subcommissions or by a committee of examination, to have the necessary authorization of the Conference for this purpose.

In the absence of this authorization, we must admit that the Third Commission is not competent to examine whether and under what conditions neutrals are permitted to lay mines.

In these circumstances I therefore believe that it is not desirable to ask

the Conference for a special mandate. Happily the question is not pressing, and in our opinion it is more desirable to bring the work that we have undertaken to completion than to endeavor to impose new tasks upon us at this late hour.

His Excellency Mr. Ruy Barbosa reads the following considerations:

In the debates of the Third Commission on the right of neutrals to lay automatic mines we are one of the most interested countries. We do not have and we cannot soon have a navy that will answer to the necessities of the defense of our coasts and our ports along a coast-line so vast and so indented as is ours. It offers so much access to the enterprises of belligerents that we could not except with great difficulty satisfy the requirements of our responsibility and honor, especially in cases of conflict between powerful States, if we were not permitted to make use of certain inventions of the present day in order to shelter our respectability from the affronts of war.

It is for these reasons that it would not be possible for us to abandon the question of the laying of mines in neutral waters. You do not have to express yourselves now on the basic principle. But its solution depends absolutely upon the answer here given to the preliminary one submitted to you.

In the first place, is this question outside the program of the Conference? Next, even if, to be exact, our program does not contain it, would not the Conference have the right to consider it?

I answer the first question in the negative. This subject is not foreign to our program. For, in the first place, it has reference in the most express manner, to the "rights and duties of neutrals at sea"; and, after having mentioned it in connection with the Convention to be drawn up concerning the laws and the customs of naval war, the Russian program returns to it in a general way by declaring that the Government of the Czar "has taken into account, so far as possible, the recommendations expressed by the First Peace Conference, especially that respecting the rights and duties of neutrals."

In another place, earlier than those mentioned, it was said "that it was necessary to establish fixed rules answering the requirements of the rights of belligerents and neutrals" by showing us clearly that in the intention of the initiative to which we owe the existence of this assembly, the law of neutrals was always placed alongside that of belligerents.

No other conduct could be pursued, if the aim was really as declared, "an elevated ideal of international justice."

It would be a very curious and a very strange ideal of humanity that would attempt to work towards peace by convoking an international Conference intrusted with the duty of consecrating the laws of war, but forbidden to examine those of neutrality.

[367] Besides, the invitation, according to its own terms does not propose to limit our task to studying only the subjects there enumerated; for, before making a list of them for us, it indicates them very simply as "the principal points" of our task. This is the way the Conference understood it, in adopting the interpretation in the most solemn way, in a subject which is one of the most serious. It is well known that the question of disarmament, or of reduction of armaments, had been intentionally excluded from our program. We find there even a passage whose object was no other than to make allusion to this problem for the purpose of rejecting it. Nevertheless it has been taken into

consideration in a plenary meeting of the Conference, which has adopted with applause the *vœu* formulated by the delegation of Great Britain.

This precedent is decisive. But we do not need it in order to make clear the limits of our competence in our deliberations.

It would be absurd indeed to attribute to the decision of those alone who convoke an assembly of States the power of restraining the latter from exceeding the limits they wish to impose upon them.

Assuredly the invitation should be accompanied by a program explaining it, justifying it, and indicating the determining views and the principal subjects. But this program is no more than an invitation. It could never be a limitation of powers. For there is entirely lacking in those who call the meeting any authority to fix them in a binding way upon the States convoked.

The latter are sovereign States. They bear of themselves powers limited only by their own will. Therefore from the moment that they are agreed of their own free will as independent sovereignties to profit by their meeting in order to give attention to a subject which by its urgency or its necessity imposes itself upon their attention. nothing can prevent them from doing so if the consent is general.

These notions are obvious to our common sense, and need no evidence, for they cannot be mistaken. A head of a State can convoke other nations in a plenary assembly. But he is the head only in his own State. The others, when once convoked, and met, meet with no barrier to their discretion other than in their mutual rights and reciprocal duties. This right could not be withheld from us except by reducing us to the condition of subjects of the head of the State convoking us.

Now as that is unthinkable, the doubt that has arisen on this point cannot continue. But although the right in question is incontestable we should not lose this opportunity of affirming it by a categorical vote, since apart from the general interest of the question, there is also that of showing by a decision upon a special point that in the view of the Second Peace Conference the etiquette of war is not more respectable than the rights of neutrality, nor the guaranties of offense more sacred than those of defense among nations. (*Applause.*)

His Excellency Mr. Nelidow desires to express his opinion on the question of principle. It is evident to him that the question of laying of mines by neutrals was not foreseen by the Russian program which had reference only to the right of belligerents in this respect. He shares the opinion of his Excellency Sir ERNEST SATOW. The examination of this question is not included in the program of the Third Commission; it would therefore be a brand new subject, and it is too late to undertake it. He likewise shares the ideas expressed by Vice Admiral RÖELL, who has justly pointed out the danger of allowing neutrals complete liberty as to the use of mines. In reply to his Excellency Mr. [368] RUY BARBOSA, who has alluded to the sovereign right of States with respect to the program of the Conference, he observes that this right was kept in mind at the time of the convocation of the Conference. The program was submitted to them. The Russian Government took into consideration the reservations formulated; it is as a consequence of that course that the Conference has dealt with points not included in the program.

His Excellency Mr. Tcharykow, in continuation of the ideas expressed by his Excellency Mr. NELIDOW, presents in the name of the delegation of Russia,

a proposal intended to secure observance on the part of neutrals as well as on the part of belligerents of the rules of a technical kind relating to the use of mines. The proposal is thus worded:

ARTICLE 11

The technical conditions to which the use of submarine mines is subject under the present convention, shall be observed by all the States, both belligerent and neutral, that sign it or adhere to it.

His Excellency Mr. Ruy Barbosa again takes the floor and speaks as follows:

I am under the necessity of answering the remarks offered by Mr. NELIDOW. In spite of the high authority of his Excellency and the respect with which he inspires us, his remarks have not shaken the opinion that I had expressed on the subject of debate.

My illustrious opponent does not question the sovereignty of States and the rights that flow therefrom as regards the program of the Conference, its organization, and changes to be introduced into it. But according to him the States came into the Conference with this authority which is not denied them, and fixed the program when they answered the circular of the Imperial Government of Russia and acquiesced therein. Since that time, among those who agreed upon the terms of the Russian proposal, there has been a pact limiting precisely the rights of the contracting parties; and if Great Britain has been able to bring up the question of armaments, it is because she took care to make reservations in that sense.

To maintain my position in the debate, I do not need to deny this kind of contractual bond that is alleged to exist between the nations consenting to the program. I have said enough about it to permit me not to recur to it. But even if we admit without restriction the theory of my respectable opponent, it remains true that the scope of this Convention could not extend beyond the terms of its text.

Now the terms of the program of the Conference suffice to show us in a decisive fashion that it does not strictly limit the contracting parties to the subjects enumerated therein. Indeed, in the note of the Legation of Russia at Rio de Janeiro, April 21, communicating the program to the Brazilian Government, we were told "the Imperial Government proposes as the program of the contemplated meeting the following *principal* points:"

The enumeration that follows and constitutes the program contains therefore only the *principal* points. Consequently these points being only the principal ones of the program, are not the only ones. The program thus clearly embraces points not specified in its enumeration.

What then are these points? Naturally those that deal with the questions enumerated and are connected with them. We find this well determined in the program, which, while excluding from our competence matters concerning political relations between States or the order of things established by [369] treaties, declares also: "nor must the deliberations of the projected meeting bear, in general, on questions not entering directly into the program adopted."

It cannot be denied that relationship is a direct bond between the two subjects that it connects with each other. Therefore, even if the program had not said

expressly, as it does, that the questions it enumerates are only the principal ones that the Conference is to study, the other clause to which I have just alluded would of itself alone be sufficiently expressive to permit us here to take up any matter directly attached to, that is to say, connected with, those designated in the text of the program.

But, that being admitted (and I do not see how one can refuse to admit it), is it not incontestable, by reason of the most direct of relationships, that the Conference, called to regulate the rights and duties of belligerents during naval war, is implicitly, but clearly and precisely, not only authorized but even obliged to lay down the corresponding rights and duties of neutrals during maritime war?

This correlation is manifest. Think of the situation created by the rupture of peace. Every war has two faces, belligerency and neutrality. As soon as hostilities are declared and so long as they last there is conflict on the one side, and on the other abstention. But these two opposing situations may come into conflict with each other. The interests of the war have a tendency to invade the field of neutrality, whilst on the other hand the exercise of neutrality sometimes gives rise to embarrassment in the legitimate operations of war. How then prevent the clash between these two positions with their delicate mutual relations? Naturally by tracing with precision the frontier which should hold each in its own legal domain. In what way? By fixing for the two parties the duties and the rights of each.

But it is necessary to do so for both parties at the same time, and not for one alone; for between two legal situations existing side by side, whose tendencies may be found in antagonism, what really and practically places a limitation upon the duties and the rights of one of them, is the fixing of the duties and the rights of the other. Thus belligerents will be confined within the bounds of their permissible action only when neutrals are guaranteed against action on the part of belligerents that is not permissible.

Now let us examine the case in question, that of mines. What is in the mind of the neutrals when they claim the right of making use of them in their waters? To resist invasion by belligerents for the purpose of carrying on operations there which the rules here adopted do not permit in that region of the sea. Therefore the declaration of the right of neutrals concerning this subject is only the other face, the reverse, the counterpart itself of the right of belligerents.

Is it permitted you to neglect the latter while occupying yourselves with the former? That would be, on the part of the Peace Conference a flagrant act of partiality towards war. For to what are neutrals looking when they defend their coast by means of mines?

Is it to commit hostilities against belligerents? No. It is to shelter themselves from the blows of war. Are you going to refuse to the peaceful the means of defense when you place in the hands of the warring the means of aggression?

Such cannot be your thought. But the question has still another aspect. In truth, if you declare yourselves without competence, what you are doing is not solving the question; it is leaving it untouched. The result would therefore be that as regards neutrals the use of mines would remain not forbidden but without any regulation. Then, while with respect to belligerents the [370] use of mines would become subordinated to conventional provisions, it would be free, arbitrary and unlimited with respect to neutrals.

Now weigh well the consequences. The abuse of that dangerous instrument, to which selfishness or panic might push certain neutral countries would become a scourge or a menace for the others. With a defensive purpose, mines might be used that would create one of the gravest of offensives against the whole world. Commerce would not know where it stood between the war zone sown with murderous engines by belligerents and the peace zone covered by neutrals without regulation with the same terrifying instruments.

Therefore, not only for the defense of neutrals, but for the general security of all, for the universal good of commerce, of navigation and of maritime relations between peoples, it is necessary to regulate the use of mines both on the part of belligerents and on that of neutrals by recognizing the rights of them both but by forbidding to both of them excess, abuse, or license, which are so much to be feared here.

You will see, gentlemen, that I have no interest in combating the testimony of the illustrious President of the Conference when he assured us that in the preliminary work of the program there was never any thought of the rights of neutral, on this subject. His Excellency would be incapable of departing from the truth. But, if that is so, it was an oversight and a most serious one. It would not bind us, especially as the text of the program itself, by this accidental and deplorable omission would then have said the contrary of what was in the minds of its organizers.

His Excellency Mr. Hagerup spoke as follows:

I permit myself to offer some remarks in my capacity of president of the committee which has had to examine this question. In the first place, so far as concerns the competence of this Commission to deal with the question, it goes without saying that only the Conference in plenary session can decide whether a question is within or without the program of this Conference. But the Conference needs information that can be furnished by preliminary discussion in one of its commissions and no other commission could be more fitted to prepare the resolution of the Conference than this one, the only one that has taken up the question of submarine mines.

As regards the question whether the placing of mines by neutrals is within the scope of our program, I do not wish to oppose the point of view maintained by his Excellency the first delegate of Russia, especially as he did not come to the conclusion that the subject in question should be excluded from discussion. Nor shall I enter into an examination of the general considerations just developed by the first delegate of Brazil. But I would like to point out the danger in interpreting the programs of these conferences too narrowly. It is admitted, even by those who maintain that the placing of submarine mines by neutrals is not on the program of the Conference, that the contrary opinion can well be supported by the very terms of the Russian program that speaks also of the rights and duties of neutrals. Now it is evident that the Governments that have desired to see this question discussed and which have understood it to be within the terms of the program have found no necessity to propose in advance an extension of the program. If the program is interpreted in the narrowest sense, these Governments will therefore be deceived in a certain measure. Another consideration that also

[371] shows the danger of an interpretation of the program that is too narrow is the following: If during the discussion of a question that is on the program it is found that another question which has not been thought of by the

author of the program is intimately related to the first question so that the two ought to be settled together, we evidently ought to have the right to take up the two questions. The Conference ought not to leave a noticeable gap in its regulations, and that would happen if the placing of submarine mines by belligerents were regulated without subjecting mines placed by neutrals to the same rules to a certain extent.

In the third place I would like to say some words on the proposal to adjourn the question made by his Excellency, Sir ERNEST SATOW. We are, without any doubt, all agreed that we ought at this moment, above all, to think of bringing our work to a close and not of entering upon discussion of new questions. But can it be truly said here that it is a new question? I shall permit myself to remind the Commission that two months ago the Netherland delegation as well as the delegation of Brazil submitted to the Third Commission proposals relating to the right of neutrals to place submarine mines along their coasts to defend their neutrality. The question of the right of neutrals in this regard has been raised in debate by myself as president of the first subcommission of the Third Commission in the meeting held July 11. Nobody then objected to this question being studied, and the proposals of the two above-mentioned delegations were referred to the committee of examination. In that committee we had at first drawn up the regulations in a way to include also neutrals. In the course of our debates the question of competence which has been submitted to you to-day was raised. If the Conference settles this question in the affirmative, there will be left only a little drafting to do. His Excellency Mr. TCHARYKOW has submitted a draft to you. I myself have intended to propose the following text: "With regard to the submarine mines that a State places before its own coasts, the same rules will be applied to neutrals and to belligerents." It is seen that there is no great difficulty in finding a formula that will give satisfaction to the desire to regulate the placing of mines by neutrals. In case of an affirmative answer to the question of competence, these rules might be submitted to the decision of the Conference at the same time as the other rules concerning mines without any lengthening of the Conference as a result.

The floor is then given to his Excellency Mr. van den Heuvel who states that there are two questions to be examined, a question of competence and a question of opportuneness. As to competence, three opinions have been stated.

His Excellency Mr. NELIDOW has expressed the idea, as it seems to me, that the Conference would not be competent for the reason that the Russian program, as understood by its authors, did not extend to the use of mines by neutral States. But I will observe that, if the authors of this program did not extend it to this point, the greater part of those who considered it and adhered to it were led by the very examination of the terms employed to give it a different interpretation. The phraseology used seems to permit of including all subjects of maritime warfare; they refer to the acts of belligerents and those of neutrals in a general way, and if they point out certain topics definitely, it is only by way of example.

[372] If the Russian program did not refer to the question under discussion explicitly, the Conference could still be competent by virtue of individual initiative. The regulations¹ provide in Article 9 for the filing of special pro-

¹ Text of regulations, vol. i, p. 58 [61].

posals, and certainly they have not done away with those that are intimately connected with the difficulties considered.

His Excellency Sir ERNEST SATOW seems to me to recognize the competence of the Conference but to have doubts regarding that of the Third Commission. In my opinion the distribution of the work among the Commissions has nevertheless been determined with great precision. The Third Commission is charged, as everybody seems to have admitted up to the present, with the question of the rights and duties of neutrals at sea in general, and this is what justifies the deposit of a British proposal on this subject. It is therefore competent to consider the special point brought out by the placing of mines as concerns neutrals. And especially so, as the subject of mines and torpedoes has been expressly referred to it.

Finally his Excellency Mr. TCHARYKOW has filed a proposition with the aim of assimilating neutrals to belligerents with respect to the technical conditions to be observed in the laying of mines. I have heard this proposal with great interest. But it is clear that the competence of the Commission cannot be restricted to that single article of regulation. If we are competent to examine these conditions, we are also competent to make a general regulation.

On the subject of opportuneness of discussing the question of mines, I have hardly any need to insist.

The solutions are prepared. The committee and the Commission have examined the two kinds of guaranties proper to introduce, the guaranties relating to the construction of the apparatus, and the guaranties relating to the limits within which they may be placed. The rules and the precautions that can be required of neutrals are analogous to those that are imposed upon belligerents. Here we have matters that are closely united in intimate connection, forming almost an indivisible whole.

And the urgency of a regulation for neutrals is as pressing as that for belligerents. Neutrals certainly have the right to defend themselves against unlawful violations of their neutrality. But they ought to safeguard the great interests of commerce and humanity. Moreover they have a great interest themselves in laying down provisions that will define their rights and prevent regrettable discussions and disputes.

The public welfare and the security of commerce, the sentiment of brotherhood and regard for public opinion command us not to give over to the perils of uncertainty and arbitrariness the use of these particularly dangerous machines, torpedoes and submarine mines. (*Repeated applause.*)

His Excellency Mr. Nelidow states that he has not denied the competence of the Conference. He only said that the question was not written in the program, but at the same time he affirms the necessity of regulating the laying of mines by neutrals in the interest of navigation and from the standpoint of humanity.

The general discussion being closed, and the question having been sufficiently elucidated by the debate, the President desires to answer his Excellency Mr. RUY BARBOSA on the subject of the obligation of the Conference to keep within its program, an obligation which the first delegate of Brazil seems to have put in doubt.

[373] With every exchange of communications between two Governments, there arises a bond if the proposal made by one is accepted by the other.

The States that have accepted the program of the Conference have contracted in this respect an obligation that continues after the meeting of their representatives. The Russian circular of July 1906 was accepted by most of the States without reservation; but certain States on the other hand gave their acceptance while formulating some reservations. This is why the cabinet of St. Petersburg brought these reservations to the attention of all the adhering Governments.

These reservations were likewise accepted by the different States, and consequently there results an engagement concerning the program of the Conference which can neither be disputed nor placed in discussion. Count TORNIELLI, in his capacity as president of the Commission, thinks he should affirm this principle. He then cites the special program of the Third Commission, which has to deal with the laying of torpedoes and with the status of belligerent vessels in neutral ports. The rest of what relates to maritime war was referred to the Fourth Commission. As to the British proposal concerning the rights of neutrals, cited by his Excellency Mr. VAN DEN HEUVEL, it relates directly to the second point on the program of the Commission with a certain extension natural to the subject. In view of the distribution of the work among the Commissions, his Excellency Sir E. SATOW expressed the opinion that it was necessary to leave it to the Conference to decide whether the question under debate belonged to the Third Commission or not. The PRESIDENT consequently asks Sir E. SATOW whether he desires a vote on the restricted interpretation proposed by him.

His Excellency Sir Ernest Satow declares that he does not insist on his view. He thinks that the British delegation will be able to vote, *exceptis excipiendis*, for the proposal made by his Excellency Mr. TCHARYKOW.

The President, after having pointed out the seriousness of the limitation that the right granted neutrals to place mines would impose on the free circulation of peaceable shipping in territorial waters, states that the Commission has shown itself favorable to the regulation of laying of mines by neutrals.

Their Excellencies Messrs. Hagerup and Tcharykow agree that their respective proposals may be combined by the committee of examination.

The President remarks that since they are agreed in favor of the regulation, they ought also to look into the obligation on the part of neutrals to give warning of the mines they have laid.

Captain Burlamaqui de Moura remarks that the question of the notification is already dealt with in the Brazilian proposal distributed to the first subcommission.¹ It would be necessary only to make a special article of it.

The President then proposes to refer the questions to the committee of examination.

No remark being made, this reference is decided upon.

The meeting adjourned at 4:30 o'clock.

¹ Annex 13.

[374]

Annex**QUESTIONS OF COMPETENCE RAISED IN THE COMMITTEE OF EXAMINATION OF THE FIRST SUBCOMMISSION OF THE THIRD COMMISSION WITH REGARD TO MINES****REPORT OF THE COMMISSION ¹**

In the course of the deliberations of the committee of examination, instituted by the first subcommission of the Third Commission to study the propositions referred to it concerning the laying of automatic contact mines and to prepare a draft project on this subject, a preliminary question as to the extent of its powers was raised, which the committee thought itself incompetent to settle and which the committee has the honor to bring before the Third Commission in order that it may determine the scope of its work on the basis of the decision which the Commission may make.

In the subcommission there were different proposals intended to include in the regulations of mines provisions also relating to the right of neutrals to lay mines for the purpose of preserving their neutrality, and regulating that right in a way similar to that adopted for belligerents.

No objection in principle having been made on this subject in the subcommission, the said proposals with the others are referred to the committee of examination.

But in the committee some members put the question, whether the regulation of the right of neutrals to place mines was not outside the competence of the Commission, indeed even that of the present Conference.

It was recalled that the program of the Conference communicated to the Powers by the Imperial Government of Russia and accepted by them, mentioned the question concerning the laying of mines among the "special operations of war"; it would thus seem that the said program intended to submit to the Conference only the regulation of the laying of mines by belligerents and not take up the question of the laying of mines by neutrals.

Other members of the committee, on the contrary, were of the opinion that, as the two subjects are so closely bound together, such a limitation would not seem to have been contemplated by the program. Moreover, among the subjects that the Conference would have to deal with there was also found the topic relating to the "rights and duties of neutrals at sea," which would imply the possibility of also regulating the right of neutrals to lay mines.

Confronted by this difference in views, the committee believed that it could not make a decision. Before dealing also with the limits that might be imposed on the use of mines by neutrals, it awaits the decision of the Commission on this preliminary question, the solution of which appears to the committee to be outside the scope of its competency.

¹ Reporter: Mr. GEORGIOS STREIT.

FIFTH MEETING

SEPTEMBER 17, 1907

His Excellency Count Tornielli presiding.

The meeting opened at 3 o'clock.

The minutes of the fourth meeting of August 28 were approved.

The President delivers the following address.

GENTLEMEN: The committee to which your First Commission referred the examination of the questions concerning the laying of submarine mines has finished its long and arduous task. In its name our eminent reporter, Mr. GEORGIOS STREIT, has rendered a report¹ whose arrangement and lucidity we have all admired. Fortunately the effort was not beyond his strength. He has overcome great difficulties. (*Hearty applause.*) It now rests with us to overcome ours.

As has been very well said in the report, the draft regulations before us are the first attempt to regulate in an international agreement a difficult and relatively new matter. It is a question of introducing into international legislation uniform provisions which are allied with the general principle, already enunciated by the Conference, that the choice of a means of injuring the enemy is not unlimited for belligerents. But the questions which we are called upon to solve are particularly difficult in that they present themselves to us from three different points of view.

Humanitarian considerations, the fundamental principles of maritime law, the interests of national defense, should I not add the supreme interest which in the heart of all nations attaches itself to the diminution of certain pecuniary charges, find by turns their application in the resolutions which a public opinion, that still feels the effect of relatively recent exciting events, awaits from us with anxiety.

The echo of these events, coming from the Far East, reverberates everywhere. As early as the month of December, 1904, the question of the international regulation of the employment of submarine mines was considered in the Italian Parliament. It provoked on the part of the Minister for Foreign [376] Affairs the formal declaration that Italy was ready to discuss and solve this problem at the Hague Conference.

Such, gentlemen, is the great confidence which has been bestowed upon us by all at the commencement of our work. Let us take care not to betray this confidence at the end of our arduous task. We have been asked, we are still being asked to reconcile divergent interests in delicate questions.

The accomplishment of such a work requires that, in view of the very great advantage of establishing the common law for all nations in regard to naval war, Governments willingly make the necessary renunciations, and even some

¹ Annex A to this day's minutes.

indispensable sacrifices. It is only thus that, in developing and consolidating the harmony of interests, one works effectively for the good-will and reciprocal confidence which are the only true and firm bases for pacific international relations.

The President then says that the report of the committee having been distributed two days ago, it is most probable that all the delegates have taken cognizance of it. If no one demands a reading *in extenso*, it will be considered read. It is necessary, however, to take account of the fact that this same report, with the modifications made necessary by the debates, will serve for the transmission of the draft to the plenary Conference. That is why it will be necessary later to deliberate and perhaps to vote upon the report.

The PRESIDENT adds the following: Before approaching the discussion of the regulations, article by article, I would suggest that the reporter be requested to read us the passage of his report in which, reviewing the essential points which obtained a majority in the committee, he gives us a brief survey of the regulations in their entirety which are proposed to us.

The Reporter, after thanking the President as well as the members of the Commission for their kindly expressions concerning his report, reads the following passage:

The principles unanimously accepted may be summed up as follows:

1. There is a fundamental distinction to be made between anchored automatic contact mines and unanchored mines; the latter may be used everywhere, but they should be constructed in such a way as to become harmless within the lapse of a very short time; it should be the same with torpedoes that have missed their mark.

2. As to anchored mines, a limitation is necessary as to space, that is to say, as regards the places where it shall be permissible to lay them.

3. But as this limitation cannot be absolute and as it does not exclude in every case the possibility of laying anchored mines where peaceful shipping should be entitled to rely upon free navigation, it is necessary here again to have recourse to a limitation in duration, that is to say, a limitation of the time during which the mine is dangerous, which would be possible, thanks to modern technical invention. We have likewise been able to reach a unanimous decision:

That every anchored mine should be constructed in such a way as to become harmless in case it breaks its moorings and goes adrift.

By this happy combination of the limitations as to space, with the technical conditions that we have just mentioned, a very appreciable improvement can be effected over the present state of things. On several occasions [377] it has been strongly emphasized that the obligation of employing anchored mines that become harmless as soon as they have broken from their moorings constitutes a very great advance over the present situation.

4. These provisions are completed by rules, also voted unanimously, establishing an obligation on States employing anchored mines not only to take all possible measures of precaution, particularly in notifying the dangerous regions (Article 6), but also to remove at the end of the war the anchored mines that have been laid, and, in every case, to provide so far as possible that the mines made use of become harmless after the lapse of a short time, so that they do not remain dangerous long after the close of the war.

5. Finally, the general consent of the States represented in the committee of examination was given to some transitory provisions undertaking

to apply these rules as soon as possible and granting the time necessary for conversion of existing material, as well as to the *vœu* that the question may be taken up again before the expiration of the necessarily rather short term for which the Convention can be concluded.

The President reads the title of the *Draft Regulation relative to the laying of automatic submarine contact mines*, which gives rise to no remarks.¹

When about to submit Article 1 to discussion, he observes that regard for the humanitarian principles is given the first place in this article. The specification of the different categories of mines which, thanks to the progress of science, can be introduced into this article, has nevertheless furnished the means for taking military interests into account in just measure.

Article 1 is then read and submitted to discussion.

ARTICLE 1

It is forbidden:

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who laid them ceases to control them;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;
3. To use torpedoes which do not become harmless when they have missed their mark.

Rear Admiral Siegel speaks as follows:

GENTLEMEN: You have seen from the report that a great diversity of opinions manifested itself in the committee of examination for mines. The text of the different articles was never accepted unanimously, the majority by which the different propositions were decided being very small. The conviction has impressed itself upon us that the question of mines cannot be considered as fully developed; the weapon is too new, its use is still unknown, its development cannot be foretold. An agreement in the matter of mines was all the more difficult to attain in that it constituted not only a military question, but an object of sentiment as well.

The following was the question for which a solution was hoped: In view of the fact that mines exist and that they are considered, with reason, an indispensable means of warfare, what is the most effective way in which to [378] regulate their employment to such a degree that the interests and safety of peaceful navigation may be reconciled with the legitimate exigencies of the war. Has this question been solved? In the opinion of the German delegation the attempt was not perfectly successful, and it is for this reason that it made the proposition, accepted in the committee of examination, that the present Convention be concluded for a period of five years, in order that there may be an opportunity at the earliest possible moment to revise and amend the still disputed provisions. Pending this definitive solution, the German delegation reserves to itself the liberty which it believes necessary for certain military actions, not considering itself bound in any measure by an international conventional rule which limits too narrowly the places where mines may be employed and the duration of their effectiveness. Also, should the German delegation make reservations to the articles whose provisions can cause misunderstandings and which, on the other hand, forbid the employment of mines in many cases where such employment is indispensable? A single example may

¹ Annex B to this day's minutes.

be cited. If a fleet X blockades the coast of a country Y, it does so to cut the latter off from all communication by sea. It desires to destroy the country through a slow starvation by depriving it of its means of existence. The country Y would do its best to avoid such a fate and would seek to keep the vessels of the fleet X at as great a distance as possible from its shores. In case the naval forces are insufficient to attain this object, the State Y finds a valuable auxiliary in mines. But in order to make them effective it is necessary to carry them to the vicinity of the enemy. However, the fleet X will not always come near the coast; it will perhaps station itself at a distance of twenty miles or more. As Article 3 forbids the employment of mines at a distance greater than three miles and in certain cases ten miles from the coast, the defender finds itself deprived of the only means which would force the enemy fleet to keep aloof from its coasts. This state of affairs would be absolutely inadmissible. But this is not all. Article 5 forbids the use of mines which do not become harmless within two hours after the person using them has abandoned them. If then, in the case mentioned, the defender had laid mines in front of its vessels in the hope of being able to stay on the spot for a certain time, and if it is attacked by the fleet X, very much stronger than itself, which obliges it to retire precipitately, how would it manage to find the means of assuring itself that the mines which it had laid would become harmless within two hours? It is evident that this is impossible; this illustration, which is entirely within the realm of possibility in every war, shows by the evidence that the provisions of Articles 3 and 5 are unacceptable from the military point of view. Also it must be observed that in the case which has just been cited one can not say that the interests of peaceful navigation would be at stake. Between a blockaded coast and the blockading fleet no commercial navigation can exist. Why then these unacceptable restrictions?

But a truly necessary provision and one that should be forcibly demanded, is that anchored mines which break loose from their moorings should become harmless, in order that these mines may not transform themselves into unanchored floating mines and jeopardize other places than those for which they were intended. This provision, as well as all others which have for their purpose the greatest possible protection to peaceful navigation, the German delegation will accept with alacrity.

His Excellency Sir **Ernest Satow** delivers the following address:

Although the question of submarine mines has been the object of profound study on the part of the committee of examination, we desire to call the [379] attention of the Commission to it again, with the request that it proceed further than the committee has gone in the matter of limitation.

I do not ignore the fact that there are two contrary opinions on the subject, both of which are supported in the Commission. On one hand, it is possible to maintain that the employment of these engines, one of which could, within the space of a few seconds, send a thousand persons to death, should be entirely forbidden; on the other hand, there is a current opinion in favor of the theory that the more terrible war becomes in its effect, the more will populations restrain their belligerent passions and the less will war, once begun, continue. Without wishing to express here an opinion upon the respective values of these two theories, I will permit myself to state that even if the use of all the imaginable engines of war were sanctioned by public opinion, the latter would

not fail to assert itself against the employment of these engines in such a way as to injure third neutral parties.

It is well not to forget that the principal aim of the present Conference is to find some means of avoiding international conflicts and not to attempt to regulate war or to lessen the evils inseparable therefrom. The very name of "Peace Conference" given to our assembly indicates clearly the peaceable nature of its work, and our first duty is to labor together with all our might to render war impossible.

Moreover it is incontestable that only our efforts to preserve peace interest public opinion and that, aside from this universal interest, this anxiety to see our work succeed with regard to the peaceful settlement of international disputes, a general indifference is manifest with regard to our attempts at codification in the domain of the law and customs of war. Thus the public follows with vague interest our debates upon the conversion of merchant ships into war-ships, the treatment to be accorded to belligerent vessels in neutral ports, and other similar questions, but it is entirely different with regard to the questions directly concerning the maintenance of peace; if the Conference results in multiplying the causes of conflict and in augmenting its probability instead of lessening it, it is certain that indignation will be rampant and that the civilized world will not pardon us easily for having conducted the debates to such a conclusion.

Such a result, however, will not fail to make itself felt following the adoption of the proposition permitting belligerents to sow automatic mines in profusion in the seas. In truth, it is difficult to conceive of news more apt to arouse the belligerent instincts of a great people than that of the destruction of one of their large steamers in time of peace and without warning. The popular clamor against the offending State would be such that it would be very difficult for a Government to resist the dangerous force tending to war.

In our opinion the present rule, which limits the employment of automatic mines in the national ports for the defensive and in the waters adjacent to a military arsenal for the offensive, is already of a nature to disturb the friendly relations between peoples. In truth, even with the above limitations, the danger for neutral vessels will always exist and the suspicion that the loss of a ship has been occasioned by the explosion of one of these mines will not fail to put public opinion in a ferment. However, it is demanded of us that we go even further in the direction of the liberty of action of the belligerent. The draft Convention which we have before us gives to the latter the right to lay mines, not only for the defense of its own shores and for the attack of enemy [380] ships leaving a military port, but also in the seas where these engines could not fail to cause great losses to neutral shipping. It allows him even the right to lay mines beyond the territorial limits and in undefined places, which however are designated by the general and vague name of "sphere of immediate activities."

Gentlemen, if this proposition were adopted it would most assuredly happen that, shortly after the laying of these mines—two or three days at the most in so far as Europe is concerned,—neutral ships would be sunk by them and there would be created a situation which diplomacy would, in all probability, be powerless to settle. Hence, if the Conference adopts the draft Convention in its present form, it will have contributed, not to the diminishing but to the

augmenting of the causes for conflict. It goes without saying that the same reasoning is applicable to the case of a neutral who wishes to preserve its neutrality by the same means.

We are firmly convinced that belligerents have not the right to expose neutrals to the dangers to which only their adversaries should be exposed and also that it is no less the duty of neutrals not to do anything for the preservation of their neutrality which would involve injury to other neutrals. It is for this reason that we consider:

(1) That belligerents should only lay anchored mines in their territorial waters or in those of the adversary if these mines are constructed in such a way as to become harmless as soon as they have broken loose from their moorings;

(2) That belligerents should only launch unanchored mines during a naval combat. These mines should be constructed in such a way as to become harmless within a short time; otherwise a neutral vessel arriving at these places after the battle and departure of the belligerent ships, and unaware that mines had been laid, would be sunk.

The above principles seem to have inspired Articles 1, 2 and 3 of the draft which we have before us.

(3) We are of the opinion that the laying of anchored mines outside of the territorial waters of the belligerents and beyond a limit of ten marine miles before military ports, military arsenals, or establishments of naval construction or repair, should be forbidden the belligerents. The right which the draft concedes to lay anchored mines in the open seas in the "sphere of immediate activity" gives to the belligerents the right to sow these engines in all the shallow seas. Thus they could be laid in a large part of the Baltic, in the North Sea, the Channel, upon the coasts of the Mediterranean, not to speak of the Strait of Malacca, of parts of the Netherland Indies, of the Gulf of Tonkin and of the Yellow Sea. It is true that it is stipulated in the second paragraph of Article 5 that anchored mines in the open sea must be constructed in such a way as to become harmless within two hours at most after they have been abandoned by the belligerent which laid them; but how is this stipulation to be put into execution? Except in the case of the electro-mechanical mine, the mine once laid can only be rendered harmless by the action of another mine which itself acts instantaneously. We do not believe that it would be possible to invent a mine which would become harmless two hours after the belligerent which lays it shall have left the place, perhaps in haste to escape from the pursuit of the enemy: the stipulation seems to us, then, to demand the impossible, and it seems preferable to us to eliminate Article 5 in its entirety, which would also result in eliminating the second paragraph of Article 9.

Article 4, paragraph 3, declares that it "is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object [381] of intercepting commercial shipping." Here is a clause which leaves to the belligerent a very dangerous mask. It was proposed in the committee only to permit the laying of mines off a commercial port upon the condition that there was in the port at least a large fighting force, but the proposition was quickly contested and, in consequence, had to be withdrawn. However, it will be, in our opinion, entirely contrary to the spirit and the letter of the Declaration of Paris to permit a blockade to be maintained in whole or in

part with the aid of mines. I beg to recall to you the very text of the passage relating to this question: "blockades, in order to be binding must be effective, that is to say, maintained by a force sufficient really to prevent access to the enemy's coastline." It is clear that here the point in question is a sufficient force composed of war-ships and that in this category are not considered submarine mines which are not subject to any control and which do not contain in themselves any evident proof of the intention of preventing access to the blockaded port. It will be well, therefore, to clarify this point, in order to remove all ambiguity, and that is why we have the honor to propose the following text in the place of the one we have before us: "*It is forbidden to lay automatic submarine contact mines before the ports of the adversary other than those which are considered as war ports.*"

The term "war port" is already defined in paragraph 2 of Article 3.

It is very clearly decreed in the Convention that anchored mines which do not become harmless as soon as they have broken loose from their moorings are absolutely forbidden.¹

Moreover, the signatory States declare in the most formal manner that they will convert the *matériel* of their mines *as soon as possible*, so as to bring them into conformity with the foregoing requirements. It is naturally asked, what is the proper meaning of the expression "as soon as possible." Only experts in the matter would be able to give an approximate answer, and I am sure that their opinion will coincide with the opinion of my delegation, which is that this conversion would take but a few months. We propose then the following amendment, which will give greater clearness to the Convention and will change in no way the principle already voted.

Article 9, paragraph 3. Eliminate the word "*unanchored*" and replace the words "*to the conditions stipulated in Article 1, paragraph 1,*" by the words "*to the conditions of Article 1, paragraphs 1 and 2.*"

The duration of the Convention is fixed by Article 10 for five years only and this article recommends to the signatory Powers to resume consideration of the question of submarine mines six months before the expiration of this period.

The duration of the Convention was first fixed at ten years in the committee of examination and it was finally reduced to five years. We believe that the period fixed is not sufficiently long, and we have the honor to propose that the text of Article 9 be worded as follows:

ARTICLE 9

The stipulations of the present Convention are concluded for a period of seven years from the date on which the present Convention takes effect, or for a period extending to the end of the Third Peace Conference if that date is prior to the end of the above-mentioned period.

ARTICLE 10

The signatory Powers bind themselves to resume consideration of the question of the employment of submarine mines six months before the expiration of the period of seven years mentioned above in Article 9, if the question has not been reconsidered and settled by the Peace Conference prior to that date.

[382] We consider that the above text constitutes an acceptable compromise

¹ See paragraph 2 of Article 1.

between the original proposition of ten years and that of five years incorporated in the draft Convention. By that time the progress of science will perhaps have made it possible for inventors to perfect mines and public opinion will have had time to enlighten itself upon the question of the employment of these terrible and dangerous engines. This is why we submit our propositions to the careful attention of the Commission with the hope of seeing them adopted unanimously.

His Excellency Baron **Marschall von Bieberstein** desires to add a few words to the declaration which has just been made by Rear Admiral **SIEGEL**:

The German delegation feels impelled to object in great measure to the provisions looking toward the restriction of the use of mines. I desire to explain in a few words the scope of our reservations and particularly to define our attitude against this interpretation that, save for the restrictions which we have accepted, we demand an unlimited freedom of action for the employment of these engines. We have no intention, to use the expression of the delegate from Great Britain, "of sowing mines profusely in all the seas."

That is not the case. We are not of the opinion that all which is not expressly forbidden is permissible.

That a belligerent who lays mines assumes a very heavy responsibility towards neutrals and towards peaceful shipping is a point on which we are all agreed. No one will resort to this instrument of warfare unless for military reasons of an absolutely urgent character. But military acts are not solely governed by stipulations of international law. There are other factors: conscience, good sense, and the sentiment of duty imposed by principles of humanity will be the surest guides for the conduct of sailors and will constitute the most effective guaranty against abuses. The officers of the German navy—I loudly proclaim it—will always fulfill in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization.

I have no need to tell you that I entirely recognize the importance of the codification of rules to be followed in war. But it would be a great mistake to issue rules the strict observance of which might be rendered impossible by force of circumstances. It is of the first importance that the international maritime law which we desire to create should only contain clauses the execution of which is possible from a military point of view—is possible even in exceptional circumstances. Otherwise respect for law would be lessened and its authority undermined. It would also seem to us to be preferable to maintain at present a certain reserve, in the expectation that five years hence it will be easier to find a solution which will be acceptable to the whole world.

But in order to give substantial proof that the German delegation will contribute voluntarily to all acceptable measures which would reassure public opinion, it declares itself willing to forbid for five years, that is to say, for the duration of this Convention, all employment of unanchored mines. It proposes then to replace paragraph 1 of the first article with the words: "*It is forbidden for a period of five years to lay unanchored automatic contact mines.*"

His Excellency Mr. **Keiroku Tsudzuki** makes the following address:

Mr. PRESIDENT: In view of the draft Convention looking toward the regulation of one of the questions which have so profoundly affected public opinion, I hope that the grave experience through which we have just passed will permit of

our making several observations and presenting several objections against the draft which we have before us.

[383] I believe that I do not exaggerate the great importance of the question by saying that of all the questions submitted to the present Conference it is undoubtedly that relating to the employment of mines which has attracted the most lively interest of the civilized world. The destructive force of this formidable engine of war causes terrible ravages, without distinction, to those who are willing to sacrifice their lives for their country and the neutral citizens who, with no suspicion of danger, are engaged in legitimate commerce and in peaceable occupations; this engine also makes its destructive effects felt after the conclusion of peace and renders dangerous the exercise of all peaceable activity not only in the zone of hostilities of the day before, but likewise throughout almost the full length of the great commercial routes of an entire ocean. If such were the absolutely inevitable misfortune of war, we might be consoled for this fatality to a certain extent. But we are convinced that, in spite of the rigorous restrictions which it is desired to impose upon the laying of mines, we will not be lacking a means sufficient for the defense of the country.

On this subject we share completely the views and the wishes so vigorously held by the scientific men, learned societies and peaceful citizens who represent civilized commercial activity. It is with great pleasure that we note in the report which has just been presented to us that it is precisely these lofty ideas which have guided the committee of examination in the laborious work meriting our sincere appreciation. It is necessary above all to render homage to a result which is the fruit of so great a spirit of conciliation and mutual concession. Nevertheless, we must remark that Article 9—particularly its first paragraph—endangers the greater part of this result, so that as a whole the draft does not respond sufficiently to the wishes so ardently expressed by public opinion. In truth, in the late war in the Far East, although at that time there was no interdiction of international law, we made no attempt to sow these engines of destruction in the open sea regardless, and we are convinced that our adversaries of yesterday, also, did not make use of this right to sow mines indiscriminately in the open sea. The mines which were laid, were laid within the limits of Articles 2-4, and it was the force of the waves, of the currents, of the winds, of hurricanes and of typhoons which, by breaking the moorings, carried them adrift into the open sea, thus causing the great number of unintentional damages which have so profoundly impressed public opinion. But, they are precisely these mines, against which the civilized world has with justice risen in indignation, that the draft, by its Article 9, paragraph 1, would permit belligerents to employ within the limits of territorial waters until the forty odd States here represented shall have invented mines of greater perfection. We desire that once for all mines which do not become harmless as soon as they have broken loose from their moorings be interdicted, even when they are laid within the limits imposed by Articles 2-4. We wish, therefore, that paragraphs 1 and 2 of Article 9 be eliminated.

Moreover, we would desire that mines laid outside of the limits imposed by Articles 2-4, anchored or unanchored, should be of such a nature as to become harmless one hour at the most after their immersion. We desire therefore that Article 5 be eliminated and that Article 1, paragraph 1, be recast in such a way as to cover all mines laid outside of the territorial limits and that the lapse of one hour be reckoned from the moment of immersion.

We do not see the necessity for the days of grace which it is desired to grant with respect to unanchored mines by the third paragraph of Article 9.

It is necessary to consider that these are mines which have never been [384] employed prior to this time. We would prefer then that this paragraph be eliminated and that the interdictions of Article 1 become effective immediately.

As to Article 10, we would prefer a stipulation which binds the contracting Powers better than is done by paragraph 2.

We should have liked to propose the following wording, excepting the right of denunciation: "*The stipulations of the present Convention shall have effect until the signatory Powers have concluded another to replace it.*"

Such being our views, we would like to submit propositions embodying them, but in view of those made by the British delegation, we content ourselves with expressing our hearty approval of these propositions, abstaining from depositing others of a similar nature which would perhaps have the effect of bringing confusion into the discussion.

His Excellency Mr. **Tcharykow** then speaks as follows:

It is with great pleasure that I endorse the remarks of his Excellency Mr. TSUDZUKI, our adversary of yesterday and our friend of to-day (*applause*), on the subject of the employment of anchored automatic contact mines which do not become harmless as soon as they break loose from their moorings. The Russian delegation, just as that of Japan, will vote "yea" for paragraph 2 of Article 1 which forbids the employment of these mines. At the same time the Russian delegation desires to explain briefly the reasons for the vote which it will cast

This vote will be given for every proposition of a nature to guarantee the interests of peaceable navigation. It will not be given for any measure which would be harmful to our defense. Moreover, the state of technical imperfection actually existing with regard to the manufacture of mines enjoins upon us a great caution with respect to the plans for using them mentioned in the draft which we are examining. We do not wish to assume obligations which we would not from this minute actually be able to live up to, and we prefer to sign an agreement less extensive but one which contains practical guaranties for the interests of legitimate commerce without compromising those of national defense.

His Excellency General **Porter** reads the following declaration:

If conventional agreements are made, it is essential that they be practical from a technical point of view, that they be concluded in terms clear enough to prevent conflicts instead of bringing them about, finally, that they should conform to recognized rights. If they are not thus established or if they are not the result of agreements concluded in good faith, they are worse than useless.

About two years ago a considerable number of naval officers of the United States met at the Naval War College. Among other questions, they received instructions to express their opinions relative to the regulation of the employment of mines in the light of the experience of the recent war in the Far East. In concert with an expert jurisconsult, they formulated a regulation which, after being discussed and slightly modified by the Navy Staff, was approved by the Navy Department on September 27, 1906, and, as a consequence, was sub-

mitted to the Third Commission, as the proposition of the delegation of the United States, in the following terms:

Proposition of the delegation of the United States of America relative to the use of automatic submarine contact mines

1. Unanchored automatic contact mines are prohibited.
- [385] 2. Anchored automatic contact mines, which do not become innocuous on getting adrift are prohibited.
3. If anchored automatic contact mines are used within belligerent jurisdiction or within the area of immediate belligerent activities, due precautions shall be taken for the safety of neutrals.

The prohibition of anchored mines was inserted in the above proposition for the reason that although their employment was held as legitimate among the belligerents, the danger to neutrals would be very great, considering the uncertainty regarding the means of limiting their duration. It is easy to say that by making a hole of a given diameter in the shell, mines could be constructed in such a manner as to fill themselves and overflow within a lapse of time easy to calculate according to recognized rules, but a bit of seaweed will stop up a hole, and if only one mine in a hundred continued to float longer than it should, the menace is too serious to be justified by any doubtful advantage to the defense.

The provision of the second paragraph of the proposition of the United States that anchored mines which do not become innocuous when they have gotten adrift, was adopted after the officer experts on torpedoes had pointed out that the mines used by the United States Navy were actually of this nature and that it was possible to count upon their action in no uncertain manner. The electric battery which animates the mine is not in the caisson of the mine, but is contained in a heavy metal cylinder weighing three hundred pounds (150 kilograms) which is immersed after the mine is anchored and is bound to the latter by a wire conductor. If the mine gets adrift, either because of tidal action or because of the operations of trawlers, the wire as well as the cable of the anchor is broken and the mine becomes innocuous. There is no doubt that the necessary mechanical apparatus has already been invented, and it is equally certain that mines which have already been manufactured can be modified in a satisfactory manner.

The third paragraph of the proposition of the United States was the object of a prolonged examination. It relates to the usage of anchored mines in the jurisdiction of belligerents, that is to say, either in the waters of the belligerent, in the waters of its adversary where it exercises the jurisdiction permitted by the rules of war, or within the area of immediate belligerent activity. It comprehends also the defense of points situated upon sea coasts, where operations are to be expected at all times, and allows the usage of mines for the defense of temporary bases, or, in case of urgency, for the security of the vessels of the fleet.

It is universally recognized that mines are comparatively the legitimate means of defense, less expensive for a State having a very lengthy coastline, a State which possesses a very weak navy, or a State which suffers from both of these disadvantages.

They are relatively of little importance for a Power having a great fleet and many submarines. They are of still less importance and are even a detri-

ment to a State which finds it of vital importance to maintain prompt and safe access to its ports, day and night.

By referring to the report of the committee of examination, one will see that Article 1 of the draft regulation is worded as follows:

It is forbidden:

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who laid them ceases to control them;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;
- [386] 3. To use torpedoes which do not become harmless when they have missed their mark.

As has already been observed, the Government of the United States has disapproved of the usage of unanchored mines.

The second paragraph which stipulates that anchored mines should become innocuous when they get adrift, is the only definite provision of the whole draft which was voted unanimously by the committee of examination.

It is understood that the third paragraph has reference to automatic torpedoes and that its object is simply to establish by a convention a construction already in general use, thanks to which torpedoes which have not exploded sink at the end of their course.

The minute that the proviso of paragraph 1, which the delegation disapproves in principle, does not in effect forbid [*permit?*] the use of unanchored mines by other Powers, it will accept Article 1 in its entirety.

ARTICLE 2

It is forbidden to lay anchored automatic contact mines beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line, as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

It is evident that the determination of the three mile limit would frequently be extremely difficult on a coast bordered by islands and by banks partially or totally submerged, and of which perhaps no survey even has been made; but the principal objection of this article is that the range of the cannons of modern war-ships being 15,000 yards, the distance of three miles or 6,000 yards is less than half their range; thus vessels would be able to attack coasts with impunity in spite of defense by means of mines.

It is true that the area for the laying of mines has been extended by a vote of the committee to the "sphere of immediate activity," and such is the purpose of the first paragraph of Article 5, but the second paragraph of this article stipulates that the mines thus placed outside of the three mile limit, *shall become harmless two hours after they have been abandoned.* It is clear that this is impossible, since such intelligent mines have never been imagined. If the vessel patrolling the mine field is forced to retire as a consequence of the approach of the enemy, all physical communication with the mines is necessarily interrupted, and the enemy, trusting in the good faith and in the technical equipment with which the stipulations of a convention have been executed by the adver-

sary, would be able to take a convenient shooting ground after the lapse of two hours, and proceed to the destruction of roads, bridges, viaducts, tunnels, docks and other manufacturing or naval construction establishments which happen to be three miles this side of the low-water mark, in spite of all mine defense.

Evidently the stipulations of Article 5, paragraph 2, are prohibitive, and this being tacitly admitted, a provision was introduced in Article 3 for the purpose of permitting the use of anchored mines ten miles off *military ports*, probably already strongly fortified, a provision which would not suffer any restriction by the second paragraph of Article 5, whereas, on the contrary, the same right is refused to ports minus defense. It is true that the second paragraph of Article 3 practically permits every port to be declared a *military port*, but the legitimate right of defense should not be subordinated to the interpretation of an intentionally vague stipulation.

Article 3 permits the defense to place mines as far as ten miles off of every port which could be declared a *military port*. Article 4, paragraph 2, permits only the attacking force to place mines beyond the limit of three miles from the low-water mark of the enemy's coast when the establishments of naval or other construction belong to the State; an anomaly which was proposed at the session of the Institute of International Law and rejected, as is set forth in the very able report now submitted to the Commission.

Articles 2 and 3 are not accepted by the delegation of the United States. They aim a serious blow at the existing rights and necessities of the defense; they are vague and complex to the point of constituting a menace of serious misunderstanding if they are accepted.

The first and second paragraphs of Article 4 are not accepted by us because of the anomaly of their provisions and also of the uncertainty of their application.

We accept paragraph 3 of Article 4.

Article 5 seems to us equally impossible of acceptance, for the second paragraph annuls an existing right by limiting the mine to be employed to a category of mines impossible of construction. Moreover, the second paragraph of Article 9 suspends this concession until the time when the impossible mines shall have been perfected.

We accept Article 6, especially this last clause: "to render them harmless within a limited time," which we approve as an additional safeguard; for example, while an anchored mine should become immediately harmless upon breaking loose from its moorings, it ought also to be provided with a device, comparatively slow but sure for its own destruction, so that it would eventually sink instead of drifting upon the ocean for several months or several years.

Article 7, being dependent upon the articles which the delegation of the United States refuses, is not accepted by it.

Article 8 is accepted. Article 9 is accepted with reservation of paragraph 2 which, itself, is not accepted. Article 10 is accepted.

The President remarks that the declarations which have been read, with the exception of that of the delegation of the United States of America, relate more to the whole draft than to certain articles of the regulations. He believes that he interprets the intentions of the authors of these declarations in thinking that their principal desire is to explain the votes which they are prepared to

make when the articles come up for discussion. It is perhaps otherwise with the declaration read by his Excellency General PORTER. It contains a detailed examination of the provisions contained in the draft under discussion and formulates amendments and substitutions of which it is wholly impossible to take account in the debate if the text is not before one. Nevertheless it would probably be contrary to the judgment of the Commission to propose the printing and distribution of the new propositions of the United States. (*Assent.*)

For this reason a record will be kept of the declaration of his Excellency General PORTER, as of the others, by inserting it in the minutes.

It is thus decided.

The President returns to the discussion and opens the debate on Article 1. He reads the proposition which has just been submitted by the German delegation and which is worded as follows:

[388] Replace paragraph 1 of Article 1 by the words:

1. To place unanchored automatic contact mines for a period of five years.

The PRESIDENT asks his Excellency Baron MARSCHALL if the proposed period of five years is to be understood as being in correlation to the provision proposed in Article 10, which fixes an equal duration for the Convention; if this duration should be prolonged by the Commission, would the German delegation accept such prolongation?

His Excellency Baron **Marschall von Bieberstein** replies that the German delegation will maintain in all cases the duration of five years.

The President proposes to put to a vote paragraph 1 of Article 1.¹

His Excellency Sir **Ernest Satow** asks if it would not be better to vote first of all upon the German proposition. The British delegation will vote with pleasure this proposition which has for its purpose the limitation of the employment of mines.

Captain **Martin** makes it known that he accepts the paragraph except for the duration of one hour which does not seem to him practically applicable.

The President begs to be allowed a parenthetical remark. He speaks not as president but in his capacity of Italian delegate. He does not wish to tire the Commission by repeating to-day the motives animating Italy, which is always in the front rank when the point in question is the defense of the interests of humanity, to demand that the interdiction of the employment of unanchored automatic contact mines should not be absolute. The moment these mines can be constructed in such a manner as to become harmless at the end of a very limited lapse of time, their employment should be permitted and, in the meeting of the first subcommission, during the discussion upon this point, the remarks which the naval delegate of Italy had the honor to make carried, inasmuch as the British delegation, among others, which at the opening had pronounced itself in favor of the absolute interdiction of this category of mines, came over then to the opinion of the Italian delegation. The latter did not then have to reckon with the oppositions which have just been declared during the course of to-day. It thinks that the arguments which it gave on the occasion of the first discussion are still in the memories of those who, after having heard them, modified their opinions and voted with Italy. The Royal delegation will not delay

¹ Annex B to this day's minutes.

matters by repeating its arguments, but it declares that its vote will be contrary to the amendment which his Excellency Baron MARSCHALL has just deposited. The parenthetical remark, adds the PRESIDENT, is closed.

The result of the vote upon the amendment proposed by the German delegation to Article 1, paragraph 1, is as follows:

15 yeas; 9 nays; 14 not voting; 6 absent.

Voting for: Germany, United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, Cuba, Dominican Republic, Ecuador, Spain, Great Britain, Haiti, Panama, Portugal and Roumania.

Voting against: Argentine Republic, Chile, Colombia, Greece, Italy, Japan, Norway, Netherlands and Salvador.

[389] *Not voting:* Bolivia, Denmark, France, Montenegro, Nicaragua, Paraguay, Persia, Russia, Serbia, Siam, Sweden, Switzerland, Turkey and Venezuela.

Absent: China,¹ Guatemala, Luxemburg, Mexico, Peru and Uruguay.

The President remarks that on all sides it is stated to him that the number of favorable votes cast for the amendment did not represent an absolute majority of the voters in the Commission and that, in consequence, after the vote upon the amendment, it is necessary to bring up for discussion the text of paragraph 1 of Article 1 as it was approved by the committee of examination. In acceding to this just statement, the PRESIDENT asks that the Commission vote upon this text.

The result of the vote cast upon Article 1, paragraph 1, of the draft is as follows:

19 yeas; 8 nays; 9 not voting and 8 absent.

Voting for: Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, Colombia, Cuba, Spain, France, Great Britain, Greece, Italy, Japan, Norway, Netherlands, Persia, Salvador, Sweden.

Voting against: Germany, United States of America, Dominican Republic, Ecuador, Montenegro, Roumania, Russia, Serbia.

Not voting: Bolivia, Denmark, Haiti, Panama, Portugal, Siam, Switzerland, Turkey, Venezuela.

Absent: China,¹ Guatemala, Luxemburg, United States of Mexico, Nicaragua, Paraguay, Peru, Uruguay.

His Excellency Sir Ernest Satow asks to be informed how the two votes which have just been cast can be reconciled. He had, in fact, intended only to cast a favorable vote upon Article 1, paragraph 1, in case the German amendment were not adopted.

The President says that in his quality of Italian delegate he can only congratulate himself upon the favorable vote of his Excellency Sir ERNEST SATOW on the text which reproduces the first proposition made by Italy at the commencement of the Conference upon this work. But if the remark just made by the British delegate signifies that he does not approve the plan adopted for the vote upon Article 1 and the amendment which had been presented upon a paragraph of that article, he would feel impelled to observe that he had announced that he was putting to a vote the text of the article elaborated by the committee of examination because the amendment had not received an

¹ See p. 448 [445].

absolute majority of votes. The numerous abstentions made it possible indeed to foresee that the article would receive in its original text a sufficient number of adhesions to be accepted. This was what after all took place.

The **PRESIDENT** then submits to discussion the second paragraph of Article 1 of the draft.

His Excellency Mr. **Tcharykow** declares that the Russian delegation accepts this article with the proviso that paragraphs 1-3 of Article 9 be maintained.

[390] His Excellency Mr. **Mérey von Kapos-Mére**, his Excellency **Réchid Bey** and Colonel **Sapountzakis** make the same declaration in the name of their respective delegations.

The second paragraph of Article 1 is adopted under these conditions.

The third paragraph is adopted without remarks, after the **PRESIDENT** recalls the reason for which this provision relative to automatic torpedoes was placed in the draft.

The **President** then reads Article 2.¹

ARTICLE 2

It is forbidden to lay anchored automatic contact mines beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line, as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

Captain **Martin** declares that the delegation of the Argentine Republic accepts the article upon condition that the distance of "three nautical miles from low-water mark" be replaced by that of "three miles from the line of navigation." This modification is necessary by reason of the very nature of the coasts of the Argentine Republic, where sand banks extend in certain places sometimes for many miles.

His Excellency **Mehemed Pasha** makes reservations on the subject of the second paragraph.

Record is made of these reservations.

Article 2 is adopted by 15 yeas against 11 nays; there were 10 not voting and 8 absent.

Voting for: Argentine Republic, Belgium, United States of Brazil, Bulgaria, Chile, Spain, France, Great Britain, Italy, Japan, Norway, Netherlands, Persia, Portugal, Siam.

Voting against: Germany, United States of America, Austria-Hungary, Cuba, Ecuador, Greece, Montenegro, Roumania, Russia, Serbia, Turkey.

Not voting: Bolivia, Colombia, Denmark, Dominican Republic, Haiti, Panama, Salvador, Sweden, Switzerland, Venezuela.

Absent: China,² Guatemala, Luxemburg, United States of Mexico, Nicaragua, Paraguay, Peru, Uruguay.

The **Reporter**, referring to the small majority attained by Article 2, recalled that the possibility of replacing the distance of "three nautical miles" by the

¹Annex B to this day's minutes.

²See p. 448 [445].

limit of "territorial waters" had been considered in the committee of examination. Perhaps it would be possible to rally a larger majority with this wording.

After an exchange of explanations, it is recognized, upon the observations of his Excellency Mr. Léon Bourgeois, that the limit of "territorial waters" would not be of a nature to guarantee greater safety to neutral navigation, considering the different interpretations of the limit of the "territorial waters."

[391] The President remarks that since no one after all seems disposed to formulate a proposition of such tenor, the discussion would not be continued unless the reporter desired to transform his suggestion into a definite proposition.

The Reporter declaring that he does not insist, the President passes to Article 3,¹ which is adopted without discussion by 14 yeas against 11 nays, there being 10 not voting and 9 absent.

Voting for: Argentine Republic, Belgium, United States of Brazil, Bulgaria, Chile, Colombia, Spain, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Salvador.

Voting against: Germany, United States of America, Austria-Hungary, Cuba, Ecuador, Greece, Montenegro, Roumania, Russia, Serbia, Turkey.

Not voting: Denmark, Dominican Republic, France, Haiti, Panama, Persia, Siam, Sweden, Switzerland, Venezuela.

Absent: Bolivia, China,² Guatemala, Luxemburg, United States of Mexico, Nicaragua, Paraguay, Peru, Uruguay.

The President then reads Article 4.

ARTICLE 4

Off the coasts and ports of their adversaries, the belligerents may lay anchored automatic contact mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports which are not military ports, unless establishments of naval construction or repair belonging to the State are situated therein.

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

The PRESIDENT recalls that the British delegation had deposited an amendment to paragraphs 2 and 3.

Vote is taken first of all upon the first paragraph of Article 4, which is approved by 14 yeas against 9 nays, 12 not voting and 9 absent.

Voting for: Argentine Republic, Brazil, Bulgaria, Chile, Colombia, Cuba, Spain, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Salvador.

Voting against: Germany, United States of America, Austria-Hungary, Greece, Montenegro, Persia, Roumania, Russia, Serbia.

Not voting: Belgium, Denmark, Dominican Republic, Ecuador, France, Haiti, Panama, Siam, Sweden, Switzerland, Turkey, Venezuela.

Absent: Bolivia, China,² Guatemala, Luxemburg, United States of Mexico, Nicaragua, Paraguay, Peru.

[392] His Excellency Sir Ernest Satow declares that the delegation of Great Britain voted *yea* with the proviso that its amendment be later approved, its intention not being to grant belligerents an unlimited right to lay mines.

¹ Annex B to this day's minutes.

² See p. 448 [445].

The vote upon the British amendment was 5 yeas against 13 nays; there were 17 not voting and 9 absent.

Voting for: Brazil, Spain, Great Britain, Japan, Portugal.

Voting against: Germany, United States of America, Argentine Republic, Austria-Hungary, Cuba, Greece, Italy, Montenegro, Norway, Netherlands, Persia, Roumania, Russia.

Not voting: Belgium, Bulgaria, Chile, Colombia, Denmark, Dominican Republic, Ecuador, France, Haiti, Panama, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Venezuela.

Absent: Bolivia, China,¹ Guatemala, Luxemburg, United States of Mexico, Nicaragua, Paraguay, Peru, Uruguay.

Before proceeding to a vote upon paragraphs 2 and 3 of the draft, the Reporter proposes, in the interests of conciliation, to vote separately upon the words "belonging to the State," which appear at the end of the second paragraph.

The proposition, not being approved, is withdrawn by the REPORTER.

Paragraph 2 of Article 4 only receives 10 yeas against 12 nays; there are 10 not voting and 12 absent.

Voting for: Argentine Republic, Brazil, Spain, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Sweden.

Voting against: Germany, United States of America, Austria-Hungary, Cuba, France, Greece, Montenegro, Persia, Roumania, Russia, Serbia, Turkey.

Not voting: Belgium, Bulgaria, Denmark, Dominican Republic, Ecuador, Haiti, Panama, Siam, Switzerland, Venezuela.

Absent: Bolivia, Chile, China,¹ Colombia, Guatemala, Luxemburg, Mexico, Nicaragua, Paraguay, Peru, Salvador, Uruguay.

Paragraph 3 is then approved by 24 yeas against 5 nays; there are 3 not voting and 12 absent.

Voting for: United States of America, Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Cuba, Dominican Republic, Ecuador, Spain, Great Britain, Greece, Haiti, Italy, Japan, Norway, Panama, Netherlands, Persia, Portugal, Siam, Sweden, Turkey and Venezuela.

[393] *Voting against:* Germany, Montenegro, Roumania, Russia and Serbia.

Not voting: Denmark, France and Sweden.

Absent: Bolivia, Chile, China,¹ Colombia, Guatemala, Luxemburg, Mexico, Nicaragua, Paraguay, Peru, Salvador and Uruguay.

The President then reads Article 5.²

ARTICLE 5

Within the sphere of their immediate activity, the belligerents have likewise a right to lay anchored automatic contact mines outside the limits fixed in Articles 2-4 of the present regulations.

Mines used outside the limits fixed in Articles 2-4 must be so constructed as to become harmless within two hours at most after the person using them has abandoned them.

Commander Burlamaqui de Moura makes the following remarks on the subject of this provision:

¹ See p. 448 [445].

² Annex B to this day's minutes.

The delegation of Brazil, following the ideas by which it has always been guided in all the work of the Conference, will vote against the provisions contained in this article, in spite of the just precautions already adopted for the present draft Convention and the very correct opinions expressed by the technical delegates of Italy and England upon the possibility of constructing automatic contact mines susceptible of becoming harmless after a very short lapse of time.

It seems to us that, if these provisions are accepted by the Commission, the consequences resulting from the employment of these engines will be very grave in case the damages caused by their use should imperil the interests of a neutral State having at its command powerful means by which to enforce its claims.

It is very possible that this neutral State, being unable to determine which of the belligerents was responsible for the accidents due to these engines, would wish naturally to obtain reparation in the manner which it judges the easiest and would exact it of the one that appears to be best able to pay.

The explanations of the distinguished naval delegate of Germany upon what is to be understood by "sphere of immediate activity of the belligerents" are sufficiently clear, but we consider, however, that they permit the "theater of war operations" to cover an extraordinarily large zone in which the gravest accidents might occur to vessels engaged in their peaceful activities nearby.

In view of the extended range of modern artillery, in the simplest case of an encounter at sea between two fighting units, this would exceed thirty odd miles, which would augment to an extreme degree the dangers incurred by peaceful navigation. It is to be feared that during the course of a combat the hope of a more prompt and sure victory would outweigh the strict observance of the provisions necessary to render the action of these mines harmless. The means by which these engines may be used with the security demanded by this Convention are unknown: also, we consider very dangerous the means proposed by the Spanish delegation to discover their effectiveness.

[394] If this article were not inserted in the text of the present Convention, the latter would, we believe, respond to the intention of the majority of those who have contributed to its formulation. Such are, according to our ideas, the advantages which it presents for the solution of the difficult problems to be solved.

His Excellency Mr. Hagerup makes certain remarks on the subject of Article 5 whose text is only the result of an attempt at conciliation between two opposing theories which came to light in the committee of examination, those of the unlimited laying of mines and those of the laying of mines within the limits of the territorial waters. The realization is forced upon us that the attempt at conciliation has failed and that, consequently, the proposed article has no reason for being. In truth, those who do not wish limitations imposed upon the laying of mines have voted against Articles 2-4; on the other hand, Article 5 is unacceptable to those who have endorsed the limitation theory.

His Excellency Mr. HAGERUP therefore supports the British amendment which proposes the elimination of Article 5. The British amendment is put to a vote and adopted by 28 votes; there are 4 not voting and 12 absent.

Voting against: Germany, United States of America, Argentine Republic, Austria-Hungary, Belgium, United States of Brazil, Bulgaria, Cuba, Ecuador, Spain, Great Britain, Greece, Haiti, Italy, Japan, Montenegro, Norway, Panama,

Netherlands, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden, Turkey, Venezuela.

Not voting: Denmark, Dominican Republic, France, Switzerland.

Absent: Bolivia, Chile, China,¹ Colombia, Guatemala, Luxemburg, United States of Mexico, Nicaragua, Paraguay, Peru, Salvador, Uruguay.

The negative vote is equivalent to the adoption of the British amendment which has for its object the elimination of Article 5.

The **President** asks if it would not be preferable, in view of the lateness of the hour and the fact that there are five more articles to be examined, to postpone the rest of the discussion to another meeting. He places himself at the disposal of the Commission, however, if it desires to continue the debate this evening.

ARTICLE 6

When anchored automatic contact mines are used, every possible precaution must be taken for the safety of navigation.

The belligerents undertake, in case these mines should cease to be under surveillance, to notify the danger zones, as soon as it can be done, by a notice to ship-owners, communicated also to the Governments through the diplomatic channel, and to do their utmost to render them harmless within a limited time.

The continuation of the discussion having been demanded on all sides, the **President** reads paragraph 1 of Article 6.

His Excellency **Turkhan Pasha** declares that the imperial Ottoman delegation adheres to the first paragraph of Article 6, under the reservations [395] contained in its declaration relative to the straits of the empire, which figures in the report which accompanies the draft Convention.

Record is made of this reservation of the Ottoman delegation and paragraph 1 of Article 6 is then adopted.

The **President** next remarks that the second paragraph seems to contain a provision relating to Article 5, the elimination of which was attained by a majority vote. He therefore asks the Commission, if, according to its judgment, this second paragraph should be put to a vote.

His Excellency **Mr. Hagerup** states that the maintenance of this paragraph seems to him necessary, the provision stipulated in it becoming applicable in case Articles 2-4 are definitively adopted.

The **President** readily endorses the remark just made by his Excellency the first delegate of Norway.

Paragraph 2 of Article 6 is adopted.

ARTICLE 7

Any neutral State which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerent States in the use of similar mines.

However, a neutral State shall not anchor mines outside the limits indicated in Article 2.

A neutral State must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice shall be communicated at once to the Governments through the diplomatic channel.

¹ See p. 448 [445].

Article 7 is brought up for discussion.

The President recalls that the question of the principle of the right of neutrals to employ mines for the protection of their neutrality was answered by the subcommission of the Third Commission in the affirmative. The committee conformed itself to the wish of the subcommission in wording Article 7, the first paragraph of which is brought up for discussion.

His Excellency Mr. Tcharykow desires to state, in the name of the Russian delegation, that the latter accepts the three paragraphs of Article 7, save for the wording of the second line of the second paragraph [*indicated in Article 2*]. Not having accepted Article 2, the Russian delegation would only be able to adhere to a wording which did not mention it, as, for example, "outside of three miles."

His Excellency Mr. Hagerup remarks that if Articles 2-4 are eliminated, it will be better then to adopt the expression "*beyond the territorial waters*."

His Excellency Sir Ernest Satow expresses the desire to know if the Commission is inclined to eliminate Articles 2-4.

These articles secured a small majority, it is true, but one cannot count with certainty as opponents either the absent, who should be considered as disinterested in the draft, or all of those who did not vote.

Among those who did not vote are the delegates of Powers which, not having any territorial waters, have no interest in the question. On the other hand, the abstentions not having been explained, it is not possible to interpret with certainty the meaning of such a vote. For these reasons, Sir ERNEST SATOW thinks that these articles which obtained a relative majority should be retained in the draft.

[396] His Excellency Mr. Hagerup feels impelled to state that neither himself nor his Excellency Mr. TCHARYKOW had any intention to prejudge the fate of Articles 2-4. Their remarks were of a subsidiary nature and had for their object only to suggest a new wording for paragraph 2 of Article 7, in case Articles 2-4 should be eliminated.

His Excellency Mr. Tcharykow confirms the remark just made by his Excellency Mr. HAGERUP.

The President then observes that he is ready to submit to the Commission every proposition which may be made of the nature indicated by the British delegation. But in his capacity as president, since no formal proposition of a dissimilar nature has been presented, he feels impelled to confine himself to taking into account the votes which have taken place up to this time. It must be admitted that the results of the voting are of a nature to engender a certain confusion and that a real advantage would be gained by settling these points before proceeding with the debate. He had all of this in mind when he suggested to the Commission the postponement of the discussion to the next meeting. In spite of the zeal of the secretariat, he adds, we cannot hope to have the complete minutes of to-day's meeting before another session of the Commission. With your consent, gentlemen, I will ask the secretary general if we can have before us to-morrow a sheet containing only the exact indication of the results of to-day's votes. Perhaps we will find there the basis and the justification for new propositions which can be submitted to the Commission in our next meeting.

No one making any remarks of a dissenting nature, it is thus decided.

The next meeting of the Commission will be held September 19, at 2:15.

The meeting adjourned at 6:15 o'clock.

[397]

Annex A

THE LAYING OF AUTOMATIC CONTACT MINES

REPORT TO THE COMMISSION ¹

In taking up the question of the laying of mines the first subcommission had no illusions as to the possibility in this delicate matter of reaching conclusions that would bring about a definitive and absolutely satisfactory solution of all its problems. In addition to the technical difficulties, which the eminent president of the subcommission justly emphasized at the beginning of our work and which have arisen with disconcerting frequency, there are difficulties of a legal nature inherent in one of the most important divisions of the law of nations—the regulation of the freedom of the sea. Between principles which at first glance seemed unreconcilable, it was necessary to find a middle path in order to comply as far as possible with all legitimate demands.

If in this question of relatively recent date theoretical study has brought out very serious controversies, we should not be astonished to meet with great caution in a diplomatic conference, the purpose of whose deliberations is to formulate a text susceptible of being transformed into an international convention involving the contracting States in undertakings that are firm and exact.

The Institute of International Law considered this subject a year ago at its session in Ghent, on the basis of a report presented by Professor KEBEDGY, and, after a very interesting discussion, it only arrived at a provisional wording of its resolutions, and decided that a further discussion should take place at the next session. A similar proceeding took place at the 1906 session of the International Law Association, where a remarkable paper was submitted by Mr. von MARTITZ, professor at the University of Berlin; this paper was referred to a committee with instructions to draw up proposals for the next meeting of the association.

[398] We are dealing in fact with one of the principal weapons that modern war makes use of. Besides submarine mines operated from a distance by electric cables and serving mainly for coast defense, and besides automobile torpedoes discharged during a naval combat, of late years there have been used automatic contact mines, both anchored and unanchored, which can be laid rapidly in great numbers, and are intended to explode as a result of a mere blow received from a hostile war-ship. No one dreams of contesting the legitimacy of these weapons from the view-point of existing law; likewise, no one has thought of forbidding their use completely—especially a use for the purpose of

¹ This report was presented to the Commission in the name of a committee of examination instituted by the first subcommission and presided over by his Excellency Mr. HAGERUP (Norway), president of this subcommission. The committee was composed of the following members: Rear Admiral SIEGEL and Lieutenant Commander RETZMANN (Germany), Rear Admiral SPERRY (United States of America), Rear Admiral HAUS (Austria-Hungary), his Excellency Mr. VAN DEN HEUVEL (Belgium), Captain BURLAMAQUI (Brazil), Colonel TING (China), Captain CHACÓN (Spain), Rear Admiral ARAGO (France), Captain OTTLEY and Commander SEGRAVE (Great Britain), Professor GEORGIOS STREIT, reporter (Greece), his Excellency Count TORNIELLI and Captain CASTIGLIA (Italy), Rear Admiral SHIMAMURA and Captain MORIYAMA (Japan), his Excellency Rear Admiral Jonkheer ROELL and Lieutenant SURIE (Netherlands), Captain BEHR (Russia), his Excellency Mr. HAMMARSKJÖLD and Captain AF KLINT (Sweden), and his Excellency TURKHAN PASHA and Rear Admiral MEHEMED PASHA (Turkey).

injuring the armed forces of the enemy. But the employment of this weapon, in itself allowable, carries danger for peaceful shipping; and peaceful shipping may claim that the sea, open to all nations, should not conceal these secret engines of destruction, sown in unexpected places, without all possible precaution being taken to safeguard the principle of the freedom of the sea definitively established centuries ago. Here it is that international law is asked to intervene and to attempt to harmonize this principle with the no less imperative exigencies of war and the legitimate needs of national defense. Moreover, the purpose of assuring to pacific commerce an effectual protection has constituted the point of common departure of all the discussions of the subcommission and of the committee. The terrible catastrophes that may be caused by automatic contact mines at any moment during a war, and even for a long time after the conclusion of peace, were present in the minds of all, and a declaration of the delegation of China summarizing recent experiences in its waters in the Far East was of a nature further to accentuate the general desire to reach agreement on this subject.

The Chinese Government (so ran this declaration) is even to-day under the necessity of equipping the vessels in its coastwise trade with special instruments to pick up and destroy the floating mines which encumber not only the high sea but also its territorial waters. In spite of every precaution being taken, a very considerable number of coasting trade boats, fishing boats, junks and sampans have sunk as a consequence of collisions with these automatic submarine contact mines, and these vessels have been utterly lost with their cargoes without the details of the disasters reaching the western world. It is calculated that from five to six hundred of our countrymen in the pursuit of their peaceful occupations have met a cruel death through these dangerous engines.

On the other hand, we must take into account the incontestable fact that submarine mines are a means of warfare the absolute prohibition of which can neither be hoped for nor perhaps desired even in the interest of peace: they are, above all, a means of defense, not costly but very effective, extremely useful to protect extended coasts, and adapted to saving the considerable expense that the maintenance of great navies requires. Certainly the ideal defense of coasts, the defense which can never cause injury to peaceful ships, is that obtained by fixed mines which explode by means of electricity. But the use of such mines is necessarily limited to the vicinity of the land, and even there it is not always possible nor sufficient. This means that automatic contact mines are an indispensable weapon. Now to ask an absolute prohibition of this weapon would consequently be demanding the impossible; it is necessary to confine ourselves to regulating its use.

[399] Notwithstanding these difficulties, the committee charged with coordinating the resolutions of the subcommission and with endeavoring to reconcile in one text the different view-points, may congratulate itself for having reached an agreement on some of the broad principles that should in its opinion govern the subject. The principles unanimously accepted may be summed up as follows:

1. There is a fundamental distinction to be made between anchored automatic contact mines and unanchored mines; the latter may be used everywhere, but they should be constructed in such a way as to become harmless within the

lapse of a very short time; it should be the same with torpedoes that have missed their mark.

2. As to anchored mines, a limitation is necessary as to space, that is to say, as regards the places where it shall be permissible to lay them.

3. But as this limitation cannot be absolute and as it does not exclude in every case the possibility of laying anchored mines where peaceful shipping should be entitled to rely upon free navigation, it is necessary here again to have recourse to a limitation in duration, that is to say, a limitation of the time during which the mine is dangerous, which would be possible, thanks to modern technical invention. We have likewise been able to reach a unanimous decision:

That every anchored mine should be constructed in such a way as to become harmless in case it breaks its moorings and goes adrift.

By this happy combination of the limitations as to space, with the technical conditions that we have just mentioned, a very appreciable improvement can be effected over the present state of things. On several occasions it has been strongly emphasized that the obligation of employing anchored mines that become harmless as soon as they have broken from their moorings constitutes a very great advance over the present situation.

4. These provisions are completed by rules, also voted unanimously, establishing an obligation on States employing anchored mines not only to take all possible measures of precaution, particularly in notifying the dangerous regions (Article 6), but also to remove at the end of the war the anchored mines that have been laid, and, in every case, to provide so far as possible that the mines made use of become harmless after the lapse of a short time, so that they do not remain dangerous long after the close of the war.

5. Finally, the general consent of the States represented in the committee of examination was given to some transitory provisions undertaking to apply these rules as soon as possible and granting the time necessary for conversion of existing material, as well as to the *vœu* that the question may be taken up again before the expiration of the necessarily rather short term for which the Convention can be concluded.

These statements are certainly of a nature to weaken the impression that perhaps will be produced by an analysis of the disagreements on different details regarding which we shall take occasion to give an account in the course of this report; they prove that the long work of the subcommission and of the committee of examination has finally succeeded in producing real results unanimously accepted. It will be for the Commission to endeavor to reconcile with the greatest degree the opposing views on those points where a solution satisfactory for all could not be found.

[400]

II

The discussion in the subcommission took place on the basis of a project presented at the first meeting of the Third Commission by his Excellency Sir ERNEST SATOW in the name of the British delegation.¹ At the same time the delegation of Italy presented an amendment on the first two points of the British project. This Italian proposition was characterized by his Excellency Count TORNIELLI as a preliminary motion.² Besides, there were the following propositions and amendments:

¹ Annex 9.

² Annex 10.

1. An amendment of the delegation of Japan concerning unanchored automatic contact mines.¹

2. Propositions and amendments of the delegation of the Netherlands relating to certain points of detail in the British proposal, and especially emphasizing the obligation to give notice of mines laid, the regulation of the right of neutrals to lay mines for the purpose of denying belligerents access to their territory, and finally the establishment of the responsibility that should rest upon Governments placing mines, if these mines cause loss of non-hostile individuals or material outside of the notified regions.²

3. A proposition of the delegation of Brazil on the subject of the defense of the coasts of neutrals and the responsibility to be established in case of the breaking loose of mines.³

4. A proposal of the delegation of Spain on the subject of the control to be exercised by an international technical commission over the use of perfected mines as well as on the subject of confining the laying of mines to hostile territorial waters.⁴

5. An amendment of the delegation of Germany concerning the use of anchored automatic contact mines in the theater of war.⁵

6. A proposal of the delegation of Russia relating to the period of time to be fixed for putting perfected mines into use.⁶

7. A proposal of the United States of America, which, although filed at the meeting of July 11, could not be distributed until after the close of the debates in the subcommission.⁷

After a general discussion all these proposals were referred to a committee of examination and drafting, in which were asked to participate the bureau of the subcommission and representatives of the delegations that had presented proposals or amendments. There have besides taken part in the work of the committee of examination representatives of the French and Austro-Hungarian delegations, and among the members of the subcommission his Excellency TURKHAN PASHA, honorary president of the Third Commission, Colonel TING in the place of his Excellency Mr. LOU TSENG-TSIANG, honorary president of the Third Commission, and his Excellency Mr. HAMMARSKJÖLD, vice president of this same Commission.

The committee likewise took as a basis of its deliberations the British proposal, changed a little in form in order to permit of placing all the proposals thus far presented upon a synoptic table,⁸ prepared by his Excellency Mr. HAGERUP.

In the course of the debates in the committee new proposals or formulas [401] were presented by the delegations of Germany, Austria-Hungary, Great Britain, Italy, and the Netherlands, which were only distributed to the members of the committee, and regarding which we shall have occasion to speak further on. Among these the German delegation presented in the third meeting of the committee the text, "combining in part the previous proposals with a view

¹ Annex 11.

² Annex 12.

³ Annex 13.

⁴ Annex 14.

⁵ Annex 16.

⁶ Annex 18.

⁷ Annex 17.

⁸ Annex 19.

to reconciling military exigencies with the interests of peaceful shipping.”¹ All these proposals and amendments served for the drafting by the bureau of the texts adopted on the basis of the deliberations of the committee in order to be presented for its definitive vote, as well as for the final drafting of the project which appears at the end of the present report and is submitted for the approval of the Commission. Ten meetings of the committee of examination were held; it was agreed not to make a record of the proceedings in order to facilitate free exchange of views among the members of the committee. The absence of such minutes explains the lengthy and somewhat unusual character of the present report, which must, in a more detailed fashion than is usual, give an account of the principal opinions expressed in the committee.

III

But, before examining the articles of our draft, it is expedient to recall a preliminary question which arose in the committee towards the end of its work and which had to be decided by the Commission; it will be remembered that, in its preceding meeting the Commission was called upon to decide upon the question, whether the regulation to be elaborated should also contain provisions concerning the laying of mines by neutrals.

The special report submitted to the Commission on this subject stated that “in the subcommission there were different proposals intended to insert in the regulations of mines provisions also relating to the right of neutrals to lay mines for the purpose of preserving their neutrality, and regulating that right in a way similar to that adopted for belligerents. No objection in principle having been made on this subject in the subcommission, the said proposals with the others are referred to the committee of examination.

But in the committee some members put the question, whether the regulation of the right of neutrals to place mines was not outside the competence of the Commission, indeed even that of the present Conference.

It was recalled that the program of the Conference communicated to the Powers by the Imperial Government of Russia and accepted by them, mentioned the question concerning the laying of mines among the “special operations of war”; it would thus seem that the said program intended to submit to the Conference only the regulation of the laying of mines by neutrals.

Other members of the committee, on the contrary, were of the opinion that, as the two subjects are so closely bound together, such a limitation would not seem to have been contemplated by the program. Moreover, among the subjects that the Conference would have to deal with there was also found the question relating to the “rights and duties of neutrals at sea,” which would imply the possibility also of regulating the right of neutrals to lay mines.

Confronted by this difference in views, the committee believed that it would not make a decision. Before taking up, therefore, the limits to be imposed upon the use of mines by neutrals, it submits to the Commission the preliminary question, the solution of which appears to be outside the scope of its competency; upon which the Commission, in the meeting of August 28, after having [402] deliberated upon the question of competence at the same time as upon the material provisions which should be decreed, ended by deciding in favor of a regulation for the laying of mines by neutrals. His Excellency the

¹ Annex 23.

first delegate of Russia stated that, although the question does not figure in the program of the Imperial Government, the latter has no objection to seeing it discussed, inasmuch as the subject is related to the subjects with which the subcommission has been called upon to consider; in this connection his Excellency Mr. TCHARYKOW presented in the name of the Russian delegation a proposition tending to put neutrals and belligerents upon an equal footing with regard to the technical conditions surrounding the use of mines. Many speakers, notably their Excellencies Messrs. HAGERUP, BARBOSA and VAN DEN HEUVEL, having again pleaded in favor of the advantage of an even greater regulation in the matter, in the interest of the needs of peaceful navigation, it is believed possible to set aside the scruples which had arisen on the subject of the powers attributed to the Third Commission by the Conference and, upon the proposal of his Excellency Count TORNIELLI, the question was referred to the committee of examination with authorization to draw up a text concerning the duties of neutrals who should place mines to safeguard their neutrality. Hence Article 7, added by the committee to its former propositions, the tenor of which we will examine later.

IV

The project which the committee has the honor to submit opens with certain prohibitions concerning the different kinds of engines to which it relates. By reason of their importance it was thought best to place these provisions at the head of the project.

ARTICLE 1

It is forbidden:

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who laid them ceases to control them;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;
3. To use torpedoes which do not become harmless when they have missed their mark.

A distinction between these three kinds of engines is made necessary by their nature and also by the purposes for which they are used.

Unanchored mines, floating at large upon the sea, constitute a tremendous danger for peaceful shipping, even beyond the theater of war and far from the places where they have been laid; this is what led the Institute of International Law to declare itself in favor of an absolute prohibition of these "floating" mines. The original project of the British delegation was conceived in this same sense; but at the very beginning of the discussion in the subcommission the proposal to prohibit absolutely the use of unanchored mines was confronted with very serious objections. It was pointed out that it is impossible for Governments to dispense with a weapon hitherto employed in naval warfare, and especially in certain cases the only means of safety for a vessel pursued by a stronger enemy. In general, it was said, the imperative requirements of [403] war are incompatible with so absolute a prohibition. Two proposals,

based upon recent progress in the construction of mines, of which we have already spoken, brought about a solution which, while taking into account military exigencies, was at the same time of a nature to respond satisfactorily to the legitimate rights of peaceful shipping. The preliminary motion of the Italian

delegation,¹ by which "unanchored automatic contact mines must be furnished with an apparatus rendering them harmless one hour at the most after their placement," was along these lines, and it met no opposition in the subcommission. A similar proposal was presented by the delegation of Japan,² and Captain OTTLEY also supported it in behalf of the British delegation in case the absolute prohibition should prove unacceptable and upon condition that the lapse of time after which unanchored mines should become harmless was to be a very limited one.

Nevertheless, the proposal of an absolute prohibition of all unanchored automatic contact mines was brought up again by the delegation of the United States of America.³ It could not rally a majority of votes in the committee of examination, which rejected it by eleven votes to four, with two abstentions, and then declared itself unanimously in favor of a limitation, in the sense above indicated, of the time during which the unanchored mine may be dangerous. But, although in agreement on this last principle, the members of the committee were not unanimous in desiring also to fix in a determinate manner the length of time to be allowed for unanchored mines to become harmless. It was maintained that there are cases where it is impossible to fix a limit in advance, that we must be satisfied with a more general formula which will, without fixing any length of time, lay it down "that unanchored automatic contact mines should become harmless after a limited time so as to present no danger to neutral ships." "If a naval force," said Rear Admiral SIEGEL, "is pursued and wishes to throw unanchored mines to prevent its adversary from reaching it, a fixed limit, especially a limit of one hour, would very often render the use of this weapon ineffective and useless, as the pursuer will be in a position, either through his scouts or other means, to know that his adversary has cast mines, and would therefore find ways to avoid all danger either by making a short detour or waiting an hour before passing over the dangerous place, after which he will be quite safe. Another case arises when an enemy blocks the mouth of a river. If the defender wishes to employ floating mines against his enemy by sending them down with the current, the time of their effectiveness must be in relation with the distance they are to travel, and cannot be fixed in advance."

In spite of these considerations the majority of the committee, desiring to make sure that the principle adopted would be really effective, declared itself in favor of a limit of time fixed in advance (nine votes to two and five abstentions), after which the committee on being called upon to make a choice between a limit of one hour and a limit of two hours (the latter having been proposed by way of compromise by his Excellency Mr. HAMMARSKJÖLD), decided in favor of a limit of one hour by a majority of eight votes against one, with seven abstentions.

The original Italian proposal was thus accepted. But it was observed that among unanchored mines are also included automatic mines in tow, and for these the limit of one hour should not be counted from the moment of placing [404] them but only from the moment when they are let loose to drift by themselves. As this observation seemed a just one, the provision was worded so as to meet this requirement. It was decided that unanchored automatic con-

¹ Annex 10.

² Annex 11.

³ Annex 17.

tact mines should become harmless one hour at the most after the one who has laid them loses control over them.

As to anchored automatic contact mines and automatic torpedoes, agreement respecting their construction was more easily reached. The Russian proposal on automatic torpedoes¹ was adopted unanimously, with the omission of the words "so far as possible," which appeared in the prohibition proposed by the Imperial delegation concerning the use of such torpedoes as do not become harmless when they have missed their mark. The prohibition of the use of anchored automatic contact mines, that do not become harmless when they have broken from their moorings, appeared in all the complete propositions, and met with no objection in the committee.

It remains only to mention on the subject of Article 1 some doubts of a technical order that were expressed in the committee. While some members of the committee were doubtful as to the possibility of any sure realization in all circumstances of the principles adopted for the construction of automatic mines, whether anchored or unanchored, contending "that there does not at present exist apparatus generally adopted or even sufficiently tried out to render mines harmless," the majority seemed more sanguine on this subject. Existing apparatus rendering mines harmless at the surface or even making their immersion complete through the infiltration of water within a limited length of time is sufficient in the opinion of Captain CASTIGLIA to meet the requirements of Article 1, and in a series of observations, addressed in writing to the members of the committee, Captain OTTLEY reminded them with respect to unanchored mines of "the process by which a hole pierced through the covering of the mine and plugged with some soluble substance like sal ammoniac could cause the explosive charge to pass under the water and make the mine sink. This process would be applicable to every mine as the coverings of unanchored mines already existing could also be easily and quickly cut to fulfill any desired condition in this sense."

So the addition of the words "so far as possible," contained in the Russian proposal and limiting the obligation to make use of automatic mines perfected in the sense of Article 1, was rejected in the committee by eleven votes to five.

It was the same with a proposal of the delegation of Spain respecting the improvements imposed by Article 1 for anchored automatic contact mines. Captain CHACÓN observed that "as all the technical difficulties were not yet removed in regard to the construction of anchored mines that become harmless on breaking from their moorings, the prohibition of paragraph 2 of Article 1 would be equivalent in reality to a complete prohibition of the use of these engines. In adopting the new rules it would be necessary to assure peaceful shipping of neutrals of their effectiveness and to avoid creating a danger situation which would not fail to be fraught with serious and sad consequences." With this aim the delegation of Spain insisted on the usefulness of creating an international technical Commission to look into the effectiveness of the perfected apparatus used by the different States in their navies. "If the invention [405] of arms and means of waging war in general must be a secret matter with each country, the means of safety, the apparatus of security applied in the interest of neutrals should be universal ground, and nothing should prevent their being made known."

¹ Annex 18.

These arguments did not succeed in convincing the majority of the committee, which considered that the establishment of an international technical committee would hardly be accepted by a large number of States, and the Spanish proposition having been defeated by ten votes to four, with two abstentions, the delegation of Spain expressly reserved the right to take up the question before the Commission.

We hasten to add that temporary provisions were adopted (Article 9), granting time for putting new apparatus into use.

V

In Articles 2 to 5 the regulations proceed to determine the places where anchored automatic contact mines may be laid—Articles 2 and 3 have reference to placing such mines as a defense for coasts; Article 4 relates to attack, that is, to the anchored mines that the belligerent places before the coasts of his adversary; Article 5 deals with the possibility of making use of anchored mines even beyond such limits, in the sphere of the immediate activity of the belligerents.

Indeed, if a limitation as to area of the use of unanchored automatic contact mines would not sensibly reduce the dangers they present, and if to realize this aim we had to have recourse to the prohibition in paragraph 1 of Article 1, for anchored automatic contact mines such a limitation as to area seems necessary from several points of view. Anchored mines concealed in the water and intended to serve for a long time constitute a permanent danger for ships assuming risks in the regions where they have been placed; it would therefore be necessary to forbid their use where peaceful shipping has the right to move freely. Nevertheless, here again the principle of the free use of the sea is in opposition with the inflexible necessities of national defense or of war, and a compromise again seems needful.

Considerations of this kind had led the Institute of International Law to desire to prohibit the laying of mines on the high seas while permitting belligerents to lay them in their own waters as well as in the waters of their adversaries, and leaving to neutrals the option of laying mines in their own waters to prevent the violation of neutrality. It is this same idea that inspired the original proposition, in which a very clear distinction was made in the same sense between the high seas and territorial waters. A single exception to this rule was contained in the British proposition: the zone of coastal waters—and in this report we thus term waters washing the coasts of a State without reference to limit—in which the laying of anchored mines was not prohibited, "could be extended up to a distance of ten miles before fortified war ports, with the responsibility, nevertheless, for the belligerent which places mines to give notice thereof to neutrals and to take the steps that circumstances permit in order to prevent, so far as possible, merchant ships that could not have received this notice from being exposed to destruction."

After a thorough discussion the committee, while taking as a general point of departure the distinction between coastal waters and the sea beyond [406] these limits, decided to fix upon a distance from the coast beyond which the use of anchored mines would only be permitted under certain restricted conditions (Article 5). These conditions would not apply to anchored mines placed within the distance fixed (Articles 2-4).

On the other hand, after long deliberation, a provision advanced at the be-

ginning of the debate by the delegation of the Netherlands was rejected. Among the original Netherland proposals was one establishing a prohibition "to bar straits uniting two open seas."¹ In a formula presented later the sense of this prohibition was thus specified: "In any case," read the formula presented to the committee of examination, "the communication between two open seas cannot be barred entirely; but passage will be permitted only on conditions which are indicated by the competent authorities."

His Excellency Vice Admiral RÖELL explained to the subcommission that the proposal had reference only to the right which should be reserved to neutrals to traverse straits uniting two high seas, straits which ought not to be entirely barred. He pointed out that, except where special conventions govern the situation of certain straits, no one in theory contested the obligation to allow passage through straits joining two open seas; but it is important that this principle be fixed by a conventional stipulation clearly stating that straits cannot be barred so as not to leave open communication for peaceful shipping. It would be well understood that the bordering State might lay down conditions for passage, especially by having the ships that wish to pass guided by a pilot. In speaking of straits joining two open seas all the interior seas of a State would naturally be excluded. "A rule," concluded the Vice Admiral, "is necessary. If we do not formulate one the situation will be untenable, and the absence of any stipulation will give rise to complaints and disputes, which from every point of view we must try to avoid."

In order to bring out the sense of the prohibition clearly there was added, after a preliminary exchange of views in the committee, to the rules proposed by the delegation of the Netherlands a second paragraph stating that "these provisions have no effect upon rules established by existing treaties nor upon rights of territorial sovereignty."

In fact, notwithstanding the explanations given, the proposal of the Netherlands met objections drawn from rights of territorial sovereignty as well as from conventional stipulations existing on the subject of certain straits. It would be necessary, it was said, that these reservations appear in the very text of the arrangement in order to cover the declarations made on several sides on the subject of existing conventional stipulations, as well as on the subject of straits whose shores belong to the same State. The declaration made in the name of the delegation of Japan at one of the sessions of the subcommission was recalled. His Excellency Mr. TSUDZUKI, while declaring that he had no objection if the rule were applied only to neutral countries, had remarked, on behalf of the delegation of Japan, that "the Netherland amendment to Article 4 of the British proposal could, in his opinion, perhaps be adapted to the geographical conditions of continental States but not always to those of insular Powers. By reason of the particular configuration of Japan, of the great number of straits separating the islands (straits which are an integral part of its territory, but which, nevertheless, would fall within the definition as written in the said amendment), the Japanese delegation could not adhere to this provision."

[407] However, even with the above-stated addition, the proposed formula concerning straits did not carry. A declaration worded more broadly, so as to include also the laying of mines in straits by neutrals, was made in the committee on behalf of the Japanese delegation by Rear Admiral SHIMAMURA; but this

¹ Annex 12.

delegation at the same time added that it would be improbable that the straits between Japanese islands would ever be entirely barred to neutral navigation, and he said that he was ready to accept a provision to the effect that—

It is desirable that communication between two open seas be not entirely barred by automatic mines. Nevertheless, passage may be subjected to conditions to be decreed by the competent authorities.

Rear Admiral SPERRY declared in the name of the delegation of the United States that "taking into consideration the great number of islands composing the Philippine group and the uncertainty of the results that the stipulation in question might have, and also taking into account the stipulations of treaties comprised within the added paragraph, it could not take part in the discussion, since, in its opinion, the matter was outside the scope of its instructions."

Finally, in a declaration made on behalf of the Ottoman delegation, his Excellency TURKHAN PASHA stated that—

The Imperial Ottoman delegation believes that it should declare that, given the exceptional situation created by treaties in force of the straits of the Dardanelles and the Bosphorus (straits which are an integral part of the territory), the Imperial Government could not in any way subscribe to any undertaking tending to limit the means of defense that it may deem necessary to employ for these straits in case of war or with the aim of causing its neutrality to be respected.

To these reservations were added doubts respecting the legal meaning of the formula as stated; it was asked what straits were contemplated by it as uniting two open seas, and up to what point would the rights of territorial sovereignty exclude an application of the principle.

Finally, the delegations of Germany and Spain declared themselves without instructions on the subject of the whole provision, and the delegation of Russia expressed reservations as to the competence of the Conference to deal with this matter. According to a declaration made by Captain BEHR on behalf of the Imperial delegation:

The article in question establishes a general status for all straits.

The delegation of Russia thinks that as the status of certain straits is regulated by special treaties based upon political considerations, the stipulations concerning these straits cannot form the subject of discussion. As to creating a special status for one class of straits and excepting others, this procedure would seem fruitless and very dangerous. The difference in status resulting therefrom, both for neutrals and for belligerents, would inevitably be a new source of conflicts between them.

I am consequently directed by my delegation to declare that, in its opinion, the question of the status of straits joining two open seas is not within the competence of the Conference, and that the Imperial delegation cannot take part in discussing any proposals relative thereto.

Owing to these reservations and declarations the committee unanimously decided to omit any provision concerning straits, which should remain unaffected by any stipulation in the present regulations; it was distinctly laid down that by the stipulations of the Convention to be concluded no change whatever is made in the present status of straits, which is in no wise affected by the provisions on the use of mines.

VI

It is within these limits that the text decided upon by the committee restricts in Articles 2 to 5 the places where anchored automatic contact mines may be placed.

ARTICLE 2

It is forbidden to lay anchored automatic contact mines, beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line, as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured, starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

The committee naturally had some hesitation when considering the substitution of the limit of three marine miles for the limit of territorial waters contained in the original British proposal. The question of knowing whether, in order to avoid controversy and different opinions as to the extent of territorial waters, it would not be better to fix a limit for the purposes of the present regulations, was brought up in the subcommission by his Excellency Mr. VAN DEN HEUVEL. As the British delegation had no objection to such a determination and had itself suggested the distance of three miles, the committee was left to find a formula to this effect which should take into account the limits necessitated by the sinuosities of the coast and the islands and islets belonging to States. It was, however, clearly established that such a determination could only relate to the laying of mines, without carrying in any manner whatever a definition of territorial waters which could have application and legal consequences in other matters.

In the committee the question had to be gone into again, as some of the members were opposed to the substitution of any fixed limit to the extent of "territorial waters." It was observed that the right of laying mines should extend as far as the jurisdiction of the bordering State, and that especially for the defense of the country, in view of the possibility of bombardments directed against the shore by enemy naval forces, the limit for anchored mines should not be less than gun range. Rear Admiral SPERRY, on behalf of the delegation of the United States of America, declared that even a limitation on the basis of territorial waters could not be considered as sufficient in every circumstance. This is why the American proposal had avoided mentioning any limit on area.

The omission (said he) in the proposal of the delegation of the United States of America relative to submarine mines of a definite restriction on the places where they may be laid is not due to any sympathy whatever with the general use of mines beyond territorial waters, a means which in common with the whole civilized world it condemns, but for quite other considerations.¹

[409] The term territorial waters is perhaps no more certain in its application than measured limits; but the naval delegate of the United States is not prepared to say that a limitation in one way or another would not affect the right to defend the four thousand miles of continental coast of the United States at certain points which must be approached through a winding channel between submerged reefs, far from the shore, where some mines

¹ Annex 17.

would absolutely prevent access. In one island of the Philippines that is surrounded by reefs there is a large bay with land on all sides, which would shelter the fleet of the greatest Power.

The Powers that are here represented have vast rich possessions in the Pacific and Indian Oceans, where the harbors and islands are protected by coral reef barriers, with only here and there a passage that may or may not be less than ten or even a hundred miles from the mainland.

The reefs may or may not be exposed at low tide. Where is the low-water mark? Has it been decided that all waters inside the reefs are territorial waters? Shall the three miles be measured from the reefs and beyond? The coast of Australia is fringed for more than a thousand miles by the Great Barrier Reef at a distance of from twenty to one hundred and fifty miles from the shore. Inside this reef, where there is only an occasional passage, there exists a labyrinth of lesser reefs and islets, but in the thousand miles the largest vessels can navigate in security under the guidance of a pilot. It is not necessary for a ship going to an Australian port to pass inside, and the interior waters can hardly be considered as forming a part of the high seas. It is not within the knowledge of the delegate of the United States whether they are so considered; but it seems doubtful that the nationals of that great and rich community would voluntarily abandon what might be almost a perfect defense of important points.

Many Powers represented here have vast colonial empires whose coasts are protected by almost perfect ramparts of coral, as all naval officers know, and it would be well to consider with care the possible effects of any conventional provision that we might agree upon, and that when once made would be difficult to denounce.

To these considerations it was objected that if we followed out all the logical consequences we should be led to omit any limitation as to area on the laying of anchored mines, which would not appear to correspond to the intentions of the American proposal; on the other hand, this proposal itself would have provided for the necessity of taking precautions for the security of neutrals, and this, by implying the obligation to give notice of the places mined, would appear to deprive these arguments of much of their force.

The committee held to the distinction in principle between coastal waters and the high sea; it decided, moreover, by a majority of votes (nine to five, with two abstentions) to fix the limit at three marine miles from the coast. In conformity with the suggestions of the subcommission, the committee, on the motion of his Excellency Vice Admiral RÖELL, as a means of designating the line to mark the limit within which the laying of anchored mines is lawful, adopted a formula almost identical with that which appears in Article 2 of the Convention on fisheries in the North Sea, dated May 6, 1882. The only change made in this

formula was the substitution in paragraph 1 of the word "islets" for [410] "banks," which is found in the 1882 Convention. Captain OTTLEY drew the attention of the committee to the discussions to which the use of the word "banks" might give rise if borrowed from the above-mentioned Convention. "At the mouths of great rivers, and indeed everywhere in the world," said he, "are found reefs and sand banks at a distance much greater than three miles from the coast; if we do not render the text more precise by omitting any mention of banks, it will be possible to extend the application of Article 2 to those banks and those reefs that are entirely or partly submerged, and the

principle adopted that prohibits as a general rule the laying down of mines beyond coastal waters might be imperiled."

The committee, notwithstanding the explanation given by his Excellency Vice Admiral RÖELL, and according to which the term "banks" was clear enough, comprising islets at low tide, that is to say, banks that are dry at low water, preferred to select a less equivocal term, and by a majority of votes (seven against four, with six abstentions) supported the opinion of his Excellency Mr. HAMMARSKJÖLD, who proposed to substitute for the word "banks" the word "islets," which appears in our text.

A reservation was formulated by the Ottoman delegation on the subject of paragraph 2 of Article 2. His Excellency TURKHAN PASHA declared that the limitation indicated as to bays in the said paragraph did not appear to him sufficiently to take into account all geographical circumstances.

ARTICLE 3

The limit for the laying of anchored automatic contact mines is extended to a distance of ten nautical miles off military ports and ports where there are either military arsenals or establishments of naval construction or repair.

As military ports are considered those ports which have been decreed as such by the nation to which they belong.

It will be recalled that a provision fixing a greater distance before fortified naval ports was already contained in the British proposal. This same proposal defined naval ports, stating expressly that as such should be considered "only ports possessing at least a large graving-dock and provided with the outfit necessary for the construction and repair of war-ships, if a staff of workmen paid by the State is maintained there in time of peace for this purpose."

On this principle itself, of fixing a wider zone before naval ports, there appeared to be agreement; the only objection was that any words on this point might seem superfluous in view of the possibility of placing anchored mines in the theater of war. But there was some hesitation as to the distance to be fixed; on the vote there were eight votes in favor of the distance of ten miles, five in favor of six miles, and three abstentions.

On the other hand, there was more difficulty in getting an agreement respecting the places before which this wider zone would be permitted. The definition of a naval port contained in the British project seemed too narrow. The delegation of the Netherlands called the attention of the subcommission to the fact that graving-docks and stocks for construction or repairs are often located in an interior commercial port which the fortified port serves as a seaport. It expressed doubts on the utility or necessity of requiring that the yards in question be operated by the State. In this sense his Excellency Vice Admiral RÖELL submitted an amendment, whereby it was left to each State to determine

which of its ports should be considered as naval ports. His Excellency [411] Count TORNIELLI observed that there is a connection between this question and the regulations adopted by the Conference for bombardment of undefended towns and ports by naval forces. If, according to these regulations, military arsenals and naval shipyards, even when belonging to individuals and located in undefended coast towns, are exposed to destruction by cannon fire by means of bombardment from the sea, it will be quite necessary to allow a State to defend its shipyards by placing mines so as to shelter them from bombard-

ment by hostile naval forces; that is to say, it is necessary to widen the zone for laying mines to ten marine miles before these places. Therefore for this purpose the places where military arsenals or naval shipyards or graving-docks exist are to be classed with naval ports.

Against these arguments Captain ORTLEY insisted, in the name of the British delegation, on the necessity of not extending the zone of ten miles to that degree; at least it would be necessary not to be able to place mines to such a distance before *every* hostile place where naval shipyards are located. He concluded by asking for the omission of these words in paragraph 1 of Article 3, and supported his amendment as follows:

If we keep the words "and those where there are naval shipyards" in the text of the Convention, it will be permissible for the belligerent to sow mines in profusion on the open sea up to a distance of ten miles around a large number of ports of a character quite commercial belonging to the enemy under the pretext that such ports possess "naval shipyards." We might cite as examples the ports of Marseille, Belfast, Liverpool, Seattle, Philadelphia, Havre, St.-Nazaire, Bordeaux, Danzig, Bremerhaven, Leghorn, Sestri Ponente, Odessa, Nikolayev, Helsingfors, Rotterdam and hundreds of other centers of industry. The result of such operations will be ruinous, and, besides, such a rule will violate the principle for which the large majority of the committee has already voted. That is to say that as far as possible the use of these engines on the open sea should be restricted.

Therefore I propose to omit the words "and those where there are naval shipyards."

In fact it seems to me that we are so occupied with the desire to accord the greatest liberty of action to a country wishing to *defend* its coast and harbors by means of automatic mines, that we are risking enlarging in an extremely dangerous way the right of a belligerent to sow these mines in profusion before the commercial ports of its *adversary*. There can be no reasonable objection to the use of mines as a means of *defense* of a port, since the defender will always be in the neighborhood to watch over the dangerous region in front of his own ports. Besides, it is a fundamental principle of international law that the sovereignty of a State with respect to defense and internal police is never hindered. But no such consideration can be advanced with respect to the other side of the question, that is to say, the unlimited placing of mines before the port of an *enemy*. This operation will always constitute a very serious danger for neutral vessels since an enemy cannot possibly watch over these mines effectively.

Let us take a concrete example. A vessel carrying mines could arrive after nightfall at the mouth of a great river—the Garonne, Plata, Seine, [412] Mississippi, Thames or the Rhine. Before sunrise the next day it could sow five hundred mines. The mines having been placed during the night the vessel laying them cannot with certainty determine the points where they are.

If we do not omit the above-mentioned words this terrible operation may take place not only within the three-mile limit but even at a distance of ten miles from the coast. The belligerent vessel will justify itself for this action by declaring that there exists in some port situated on the river a "naval shipyard," and that consequently international law grants it the right to act thus.

As is seen, the considerations presented by the British delegation had reference to attack; the reasons adduced by his Excellency Count TORNIELLI in advo-

cating the extension of the zone of ten miles to any place where naval shipyards are found had regard mainly to defense. Harmony appeared to be obtained by establishing a distinction between attack and defense. On motion of Commandant CASTIGLIA the majority of the committee decided (see the commentary on the next article) that while preserving in the text of Article 3, which contemplated only defense, the more general terms of the formula presented by the Italian delegation, the rights of the assailants would be limited in Article 4 by not permitting him to place mines at a distance of ten miles before enemy ports (not constituting, of course, naval ports) unless they contained naval shipyards *belonging to the State*.

Thus the text of Article 3 as it appears in the project secured unanimity, with the reservation by the majority of the committee that its scope be restricted in the next article with respect to laying anchored mines for the purposes of attack.

ARTICLE 4

Off the coasts and ports of their adversaries the belligerents may lay anchored automatic mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports which are not military ports, unless establishments of naval construction or repair belonging to the State are situated therein.

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

After having fixed limits for the defense of coasts the regulations take up attack in Article 4. The first two paragraphs of this article deal with the limits of area that belligerents must observe in laying anchored mines before enemy coasts; the third paragraph adds a new restriction, which is that, even where anchored mines may be placed before enemy coasts in the zone referred to in the first two paragraphs, they cannot be placed there "with the sole object of intercepting commerce."

1. Let us first take up this last provision. It owes its existence to a British proposal contained in the first project of the delegation of Great Britain, and stating that "it is forbidden to use automatic submarine contact mines to establish or maintain a commercial blockade."

[413] In the subcommission Rear Admiral ARAGO remarked that it would be, above all, necessary to determine the precise scope of this provision. "Does it, for example, forbid belligerent vessels which are establishing a blockade all use of submarine mines even for their own defense, or, on the contrary, is its only purpose to forbid the establishment of a blockade by the aid of a cordon of submarine mines placed before an enemy coast?" To this Captain OTTLEY answered "that the thought underlying this provision was the prohibition of a belligerent from closing a commercial port of his enemy through the employment of automatic contact mines."

This being the case, it was questioned whether the discussion of the British proposal did not fall outside the competence of the Third Commission. It was remarked that the question of to what extent and in what manner a blockade may be established is one for the Fourth Commission, which was dealing with the subject of blockade in war; it pertains especially to the Fourth Commission to give an expression on any question concerning the effectiveness of blockade. After an interchange of views in the subcommission the president was able to

announce the unanimous decision of the subcommission to deal with only one of the phases of the British proposal; it would only determine, in its examination of mines as a means of injuring the enemy, whether use may be made of them with the object of barring the commercial shipping of the adversary—a question, it seems, which should be answered in the negative. With this established, the committee could be trusted to emphasize this thought and to leave out of the discussion the application of the principles of the Declaration of Paris on the effectiveness of blockade to the subject of mines.

It is, in fact, along this line that the committee dealt with the English proposal. It was agreed at the outset that in order to avoid any mistake it was necessary to drop the term blockade used in that proposal.

But whilst it was preferred in several quarters to avoid any provision which might unduly restrict the liberty of action of belligerents, and which, however the rule might be expressed, would raise insurmountable difficulties in its interpretation and application and give rise either to abuses or to mutual recriminations between belligerents, the majority of the committee took the contrary position (fourteen votes to three). The majority hesitated only between the formula finally accepted, which is due to a proposal of his Excellency Mr. HAMMARS-KJÖLD in cooperation with his Excellency Mr. HAGERUP, and the wording of which was modified by his Excellency Count TORNIELLI, and another formula,¹ which was presented during the discussion by the British delegation and was worded as follows:

The laying by a belligerent of automatic contact mines before a commercial port of its adversary is not authorized except when there is anchored there at least one large fighting unit.

This last formula was intended to reconcile the two opinions, but it was abandoned as soon as it was seen that it could not gain unanimity.

2. As to the first two paragraphs of Article 4, their guiding idea is that in principle the attacking party must have the same rights and duties that the one on the defense has as to the places where it is permissible to lay mines. Equality in weapons must here also be preserved in principle.

There was an amendment² in the contrary sense presented by the delegation of Spain with a view to restrict for the attack the use of automatic contact mines to the hostile waters where the other party exercised effective power.

In support of this proposal the eminently defensive nature of mines was pointed out, and the necessity of avoiding so far as possible all confusion on the subject of responsibility for eventual damage caused by this weapon to the shipping of neutrals. To this suggestion it was answered that it seemed going too far and placing too great a restraint upon the exigencies of belligerents.

Naval war (said his Excellency Vice Admiral RÖELL) has for its aim to cause the greatest possible damage to the hostile ships in order to bring the war to an end as soon as possible.

One of the principal means is to obstruct the hostile ships in their maneuvers, for example, by preventing them from leaving their port by laying mines and at the same time giving more liberty of movement to one's own vessels. If we limit the laying of mines to maritime zones where

¹ Annex 25.

² Annex 14.

effective power is exercised we shall certainly injure operations of an offensive nature on the theater of war, but this will be going beyond the Spanish proposal, which has only for its object safeguarding neutral ships without at the same time hindering the operations of the belligerents.

The committee, while in principle favoring the point of view of equality for the two belligerents, consented to examine the possibility of finding a certain compromise between the requirements of the attack and the interests of peaceful navigation. Captain CASTIGLIA said that it is fair to give more liberty of action to the country wishing to defend its ports and its coasts with mines, assuming that it can control them more easily, than to the one using mines in the waters of its adversary. Besides the provision of paragraph 3 of which we have just spoken and which already lays quite a serious restriction upon the attacking party, another would be added, limiting the assailant as to the zone in which he may lay mines to the distance of three miles: an exception would be made for naval ports and for ports classed with naval ports by reason of establishments located there (Article 3), provided said establishments belonged to the State. Several other members of the committee favored this view, and the restriction contained in paragraph 2 of Article 4 obtained six votes against two, and nine abstentions.

It follows from this provision that the principle of equality between attack and defense finds an exception with regard to ports that are not naval ports but contain establishments of naval construction or graving-docks. If these establishments belong to the State the limit of the zone is carried to ten miles for both belligerents; if they belong to individuals it is only the zone of defense that is carried to ten miles, that of attack reaching only three miles, with the exception, of course, of the sphere of immediate activity of the belligerents, which, conformably to Article 5, has no fixed limits. It may be recalled, on the subject of distinctions to be made between attack and defense, that the question of knowing whether such a distinction can be justified has received the attention of writers on international law. Mr. Nys especially, in volume 3 of his treatise, declares himself in favor of a limitation that is unequal for the two belligerents. "Doubtless," says the illustrious Belgian writer, "the littoral sea forms a part of the theater of war, but in the littoral sea the State attacking has none of the rights of the adjacent State; it cannot, like the latter, invoke a right of [415] sovereignty; it therefore does not belong to it to exclude neutrals by all means that it deems useful; it must adopt such conduct towards them as is permitted by the law of war, that is to say, blockade by means of ships."

This view of the matter did not prevail in the Institute, which placed the two belligerents on a footing of perfect equality. We are able to state that the text drawn up by the committee of examination follows an intermediate line between the two opinions by admitting exceptions to the principle of equality.

ARTICLE 5

Within the sphere of their immediate activity, the belligerents have likewise a right to lay anchored automatic contact mines outside the limits fixed in Articles 2 to 4 of the present regulations.

Mines used outside the limits fixed in Articles 2 to 4 must be so constructed as to become harmless within two hours at most after the person using them has abandoned them.

At the beginning of the discussion in the subcommission two diametrically opposed views were advanced. The British delegation aimed at excluding all laying of anchored mines on the open sea, whilst the German delegation was of opinion that there could be no prohibition of the laying of such mines by belligerents in the theater of war—including therein the high sea—and it was explained that under the denomination of "theater of war" should be included "the sea area upon which an operation of war is taking place or has just taken place, or upon which such an operation may take place in consequence of the presence or the approach of the naval forces of the two belligerents." In support of the first view, Captain OTTLEY referred to the dangers for navigation that result from the laying of anchored mines on the open sea; these mines may be the cause of disasters long after the war; once placed they are no longer in all circumstances under the effective control of the belligerent, who often has not time to remove them, and even if he has the time, cannot always find them. The high sea will thus be infested in a manner incompatible with the rights of neutrals.

On the other hand, Rear Admiral SIEGEL emphasized the impossibility of limiting the action of belligerents by assigning to them an absolutely circumscribed zone within which the laying of mines will be permitted; in the course of hostilities such a limit can never be scrupulously observed—therefore it is better not to lay down provisions which will not be applied in practice. Moreover, if the theater of war may legitimately extend beyond the coastal waters of the two parties, it will be necessary to permit belligerents to make use of anchored mines for military purposes wherever strategy requires the use of this weapon. The furthest we could think of going would be to lay an obligation upon belligerents in a general way to take every possible precaution to safeguard the rights of neutrals; particularly they might be obligated to make use of only such mines as are constructed in such a way as to become harmless after a more or less limited length of time—in order that danger from them may not continue long after the war—or to indicate, as soon as military necessity permits, the dangerous regions.

In spite of the agreement which was easily arrived at respecting the necessity of imposing such measures of precaution in every use of anchored mines

(Article 6), the question of principle remained in controversy; on the one [416] hand some members of the committee insisted upon an absolute prohibition

of the laying of anchored mines on the open sea, whilst on the other the formula of "the theater of war" was replaced by a more general idea, the delegation of Germany having suggested¹ that the laying of anchored mines be permitted "within the sphere of the immediate activity of the belligerents." A proposal² of the delegation of the Netherlands was then presented as a compromise measure. His Excellency Vice Admiral RÖELL proposed to permit only *controlled* anchored contact mines on the open sea within the sphere of the immediate hostilities of the belligerents, or as was said in a later and more explicit rendering of this same idea, mines "which when left to themselves become harmless within a very limited length of time (two hours at the most)." It is only under such conditions that neutrals could be safeguarded effectively without depriving belligerents of an indispensable weapon. If this condition presents technical difficulties, it was said, they would appear not to be insurmountable,

¹ Annex 26.

² Annex 21.

and once the obligation is laid down in an international convention, science will not be slow in finding means to meet it satisfactorily.

But the intermediate proposal of the Netherlands did not succeed in gaining unanimity. Rear Admiral SPERRY observed that in his opinion the clause whereby mines should be constructed "in such a way as to become harmless within a period of two hours, etc.," presents "a technical requirement which has never been realized"; "besides," said he, "by this whole stipulation an unacceptable restriction would be imposed upon the right of defending places such as the outer entrances of ports, bridges, and tunnels situated near the sea, as the ordinary range of naval artillery exceeds twelve thousand meters." A vote was then taken upon the question whether in principle the laying of anchored mines should be permitted outside the zones indicated in Articles 2 to 4 in the sphere of the immediate activity of the belligerents; the committee, by a majority of nine votes to seven and one abstention, decided for the affirmative, some of the members at the same time formally declaring that they intended to vote for paragraph 1 of Article 5 on the condition that the restriction proposed by the Netherlands delegation should be added thereto. The Netherlands addition itself obtained ten votes to four and three abstentions. The committee thus decided that mines could be placed in the sphere of the immediate activity of belligerents, "provided that these mines are so constructed as to become harmless within a period of two hours if they do not remain under surveillance."

This last restriction was changed once more; in accordance with an observation of Captain OTTLEY, accepted by the majority, and assuming the impossibility of having mines constructed so as to *become* harmless of themselves at the moment they are abandoned, it was necessary to state that the obligation imposed consists in making use of mines that can be *rendered* harmless within a period of two hours at the most, counted from the moment when these mines are abandoned. Doubts having again arisen as to the technical possibility of realizing this obligation, the committee was called upon to vote on the new English formula; it was accepted by ten votes to four, with two abstentions.

VII

Although an agreement could not be reached on all points with respect to the places where mines may be placed and with respect to the conditions of the construction of mines, there existed, on the other hand, from the beginning [417] a unanimous wish to impose upon States making use of mines very strict obligations as to the precautions to be taken to safeguard peaceful navigation in the greatest possible measure.

These are the precautions contemplated by Articles 6 to 8 of the draft.

ARTICLE 6

When anchored automatic contact mines are used, every possible precaution must be taken for the safety of navigation.

The belligerents undertake, in case these mines should cease to be under surveillance, to notify the danger zones, as soon as it can be done, by a notice to ship-owners, communicated also to the Governments through the diplomatic channel, and to do their utmost to render them harmless within a limited time.

The original proposals¹ of the British delegation as well as the amendments

¹ Annex 9.

to those proposals presented by the delegations of the Netherlands and the United States of America¹ contain provisions along the same line.

In a general way (according to the British project) the necessary precautions shall be taken to safeguard neutral vessels engaged in a legitimate trade; and it is desirable that by reason of the very measures taken in the construction of automatic submarine contact mines these engines cease to be dangerous at the end of a suitable period.

The same provision was repeated in the amendment of the delegation of the Netherlands, with the sole difference that it was also specified that "the laying of mines in territorial waters should be published." The American proposal, on the other hand, contented itself in a more general way with imposing the obligation to take "the precautions desirable for the security of neutrals."

The examination of these formulas was referred to the committee, where a proposal of the delegation of Germany² was presented combining these different provisions.

Rear Admiral SIEGEL stated that "in order to cooperate in the work, the purpose of which was to defend the interests of neutrals and safeguard the security to which they are entitled by adopting every measure that might seem practical and acceptable from a military point of view," he proposed the following formula:

If anchored contact mines are employed, all necessary precautions must be taken for the safety of legitimate navigation.

The belligerents undertake especially, in case these mines are left to themselves, to notify, as soon as possible, the danger zones to the public, or to render them harmless within a limited time, so that a peril to legitimate shipping may, as far as possible, be removed.

It is this last text which served as a basis for the discussion of the committee, and which, after modification, appears in the project submitted to the Commission. At first, in order to do away with scruples of a legal nature that had been expressed concerning the possibility of restricting the precautions to be taken to *legitimate* navigation, this last qualification was omitted.

Thereupon a substitution was made in paragraph 1 of the words "*possible* precautions" for the words "*necessary* precautions," in accordance with an amendment that had already been offered in the subcommission by Captain IVENS FERRAZ in the name of the delegation of Portugal and taken up again in the committee by his Excellency TURKHAN PASHA. This change does [418] not carry any essential modification; it is natural that the necessary precautions be taken so far as they are possible. Nevertheless, the purpose of the proposed amendment was manifestly to weaken the obligation and to emphasize the idea that it lies within the judgment of each State to determine in detail the measures to be taken.

The committee took the opposite view, and by a majority (twelve votes for and four votes against) decided to combine the two obligations contained in the second paragraph of the article proposed and constituting, according to the German text, an alternative. It thus changed the words "*or to make provision*" into "*and to make provision*," and at the same time it inserted, in order

¹ Annex 17.

² Annex 23.

to remove doubts that had arisen on the subject of the technical possibility of having mines that become harmless after a limited length of time, the words "so far as possible." The last phrase in paragraph 2 of the German text was omitted as being already contained in the first paragraph; the other modifications adopted are likewise purely of form. Finally, it was specified that the dangerous regions shall be indicated by notice given to shipping through publications, and communicated, for additional security, also through the diplomatic channel; but this last addition received only twelve votes, five members of the committee abstaining.

In spite of the more or less vague character of the different obligations laid down in Article 6, there was agreement as to their efficacy, assuming that of course every State will do its duty in observing them strictly, especially by giving the notifications as soon as possible where military requirements permit this to be done. As to the conditions of construction spoken of in paragraph 2 of the article and to "the limited lapse of time" there provided, although there was unanimity in the view that it was for the State laying anchored mines to fix this period in order that these mines might not continue to be dangerous long after the end of hostilities, there was a long discussion on the possibility, from the technical point of view, of meeting these obligations. Captain OTTLEY remarked on this point "that the laws of electro-galvanic action between two dissimilar metals when submerged afford an easy and economical method of altering the coverings of even existing mines so as to satisfy the condition of Article 6; it would be sufficient to bore a hole of a few centimeters in the covering of a mine and to close the hole with a stopper made of metal such as zinc. By changing the metallic character of the disk and changing its thickness, the period during which the mine will stay afloat and active can be regulated; the thinner the disk is, the shorter will be the active life of the mine."

These statements presented by the British delegation in one of the last meetings of the committee met with no objection on the part of the other technical delegates present; nevertheless, the committee thought that it could not accept the proposal, renewed by the British delegation, to omit the words "so far as possible," which had been adopted previously.

ARTICLE 7

Any neutral State which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerent States in the use of similar mines.

However, a neutral State shall not anchor mines outside the limits indicated in Article 2.

A neutral State must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice shall be communicated at once to the Governments through the diplomatic channel.

[419] When the question of regulating the laying of mines by neutrals again came before the committee of examination, the discussion on this subject that had already taken place in the subcommission was resumed. Indeed, two proposals had been brought before the subcommission regarding the rights and duties of neutrals in this matter. A proposal of Brazil,¹ providing for the laying by neutrals "for the purpose of ensuring respect for their

¹ Annex 13.

neutrality" of "submarine mines exploding under the action of an impulse given with the knowledge of the authorities of a State," and a broader proposal of the Netherland delegation,¹ applying to neutrals all the provisions in the original British project for the laying of mines by belligerents and allowing neutrals to place unforbidden mines in their territorial waters to prevent access to their coasts.

The fundamental idea contained in these two proposals was the same; the Brazilian proposal merely placing a greater restriction as to area upon the mines that neutrals could use.

His Excellency Vice Admiral RÖELL called the attention of the subcommission to the necessity of regulating this subject from two points of view; on the one hand in order to recognize expressly the power of neutrals to lay mines for the preservation of their neutrality, while at the same time conforming to the duties incumbent upon them with regard to the two belligerents, and on the other hand in order to impose upon them with respect to the use of mines the same obligations that are imposed on belligerents in the interest of peaceful navigation. Captain BURLAMAQUI explained the necessity of completing the British project in this sense as it appeared to deal only with belligerents; at the same time he urged the necessity of a notification by neutrals, general or special according to the circumstances of the moment, of the regions where they had placed mines. In support of these considerations he relied upon the decisions reached by the Institute of International Law in its session at Ghent and the opinions of several well-known writers on international law; and he concluded in favor of a right in neutral States to lay mines based on their fundamental right of self-preservation.

These arguments were resumed and developed at length in the committee by the naval delegate of Brazil, who remarked that a substantial guaranty of neutrality would have as a consequence the localization of armed conflicts between nations, and would contribute to their more speedy termination, an object that everybody should favor, inasmuch as it is impossible to do away entirely with war, and that it would be necessary to attempt to preserve neutrals as much as possible from any violation of their neutrality by permitting them also to use for this purpose in their own waters weapons that belligerents are permitted to use on the high seas. While neutrals have the right not to become involved in any way in the hostilities, they have heavy responsibilities as well as difficult duties. It is necessary to give them the means of discharging the obligations laid upon them while facilitating their friendly attitude with regard to the two belligerents; they must be strong in order to be respected and in order to be able to remain apart from the consequences of the conflict.

The discussion took place upon the basis of a text offered by his Excellency Mr. HAGERUP in the following terms:

Every neutral State which places automatic submarine contact mines before its coast must observe the same rules and take the same precautions as are imposed upon belligerent States in the use of similar mines.

It was at first stated that the meaning of this proposal was identical with that of the one presented to the Commission by his Excellency Mr. TCHARYKOW from the delegation of Russia with a view to assimilate, as to the technical

¹ Annex 12.

considerations to be observed, the use of mines by belligerents and by neutrals.¹

But it was asked whether the assimilation of neutrals to belligerents should also extend to the places where submarine mines could be anchored, and whether precautions to be taken by neutrals ought not to be stricter and more definite than those provided for belligerents. Rear Admiral ARAGO stated that as regards neutrals it should be enough to allow them to lay mines only within the three-mile zone; they should also be obliged to give navigators a *previous* notice of the places where they wished to lay mines, and to communicate this notice *at once* to the other Governments; the military reasons, said he, that give more latitude to belligerents cannot be invoked in behalf of neutrals; the zone of ten miles has been granted belligerents mainly in view of the danger of having their ports bombarded by hostile naval forces; this danger does not exist in the case of neutrals. The latitude granted belligerents as to notification answers imperative demands of warfare; the neutral is in no such situation: it can always notify, and it ought to do it in advance, because its waters are deemed to be open to the free passage of peaceful vessels.

To the objections based on the right of neutrals to defend places to the same extent as belligerents and on the power which should be granted neutrals to prepare themselves eventually for war, it was answered that neutrals need not defend themselves, but need only defend their neutrality, and that this does not imply an equality of rights with belligerents. As to preparations for an eventual war it would be evident that these preparations are not contemplated by the provisions restricting neutrals in laying mines to a zone of three miles.

For these reasons the committee took the view that there should be a greater restriction upon neutrals; accordingly, paragraphs 2 and 3 of Article 7, which were drawn up by the president of the committee, received a majority of votes, to wit, paragraph 2 received eleven votes against four and two abstentions, and paragraph 3 received thirteen votes against one and three abstentions.

The naval delegate of the United States of America expressly declared that he would at that time refrain from voting on this article.

ARTICLE 8

At the end of the war, at the latest, the signatory States shall be obliged to do all in their power to remove, respectively, the mines which they have each laid.

As regards anchored automatic contact mines which one of the belligerents may have placed along the coasts of the other, the signatory States agree to notify the other party of their location, and each State must proceed with the least possible delay to remove the mines in its own waters.

The provisions of Article 8 complete those contained in Articles 6 and 7 by imposing an obligation to remove after the close of the war the mines placed by belligerents or by neutrals. Here again States are bound to do "[421] in their power" to conform to this obligation. This formula, which was adopted unanimously, as was the whole of Article 8, does not carry with it any danger as to the rigorous application of the obligation assumed; but it is intended to avoid eventualities that are possible. It may be, as was explained by Rear Admiral SPERRY, that in consequence of some mischance the charts and records of the positions of mines are lost; it may be also that in some rare cases the anchored mines that have been placed cannot be found.

¹ See *supra*.

The restriction laid down is not intended to release the State from the serious duty of making every provision for the need stated in Article 8; its only purpose is to take into account cases of *force majeure* which would render impossible a strict application of the principle.

The provision of Article 8 has its origin in the project of the British delegation;¹ the proposal was repeated in the amendments offered by the delegation of the Netherlands² and in the project submitted by the delegation of Germany.³ In the British proposition, which did not provide for laying mines outside of coastal waters, the question was naturally only of mines placed within these limits; the Netherland amendment, starting with the idea of a regulation of the placing of mines also by neutrals, provided likewise the same obligation for these neutrals. The German proposition extended the obligation to mines placed in virtue of Article 5, to wit, in the immediate sphere of the belligerents outside of the limits traced in Articles 2 to 4.

The committee, a majority of which had accepted paragraph 1 of Article 5, declared in favor of this extension of the obligation to be laid down; we do not need to point out that this extension of the obligation to mines placed in the sphere of the immediate activity of the belligerents conformably to Article 5, paragraph 1, would become useless after the adoption of paragraph 2 of that article in case the technical conditions imposed in the said paragraph 2 obtain general consent.

For the rest, the provisions of Article 8 explain themselves; it is natural that recourse be had to a mutual notification by belligerents of the mines that each of them has placed before the coasts of the other, in order to allow each State to make search only in its own waters; any other solution would be difficult to apply at the moment a war has just ended. Moreover, the idea that belligerents should remove also the mines that each of them has placed before the coasts of the other has been done away with in view of the dangers of new conflicts that might ensue.

It will belong to the States to regulate in the terms of peace or in a later stipulation how the belligerents shall eventually effect the exchange of mines belonging to each other that have been recovered in their waters.

VIII

Articles 9 and 10 form, so to speak, the last chapter of the present regulations; their purpose is to determine the duration of these stipulations and to define their mode of application, while taking into account practical necessities resulting from the putting into use of perfected mines.

ARTICLE 9

The signatory States which do not at present own perfected mines of the kind contemplated in the present regulations, and which consequently could not at present carry out the rules laid down in Articles 1 and 6, undertake to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

Until a belligerent has become supplied with mines constructed so as to answer to the

¹ Annex 9.

² Annex 12.

³ Annex 23.

conditions of Article 5, paragraph 2, he is forbidden to place anchored automatic contact mines outside the limits fixed in Articles 2 to 4.

It is forbidden to use unanchored automatic contact mines which do not answer to the condition stipulated in Article 1, paragraph 1, one year after the present Convention goes into force.

Article 9 contains transitory provisions. It had its origin in a proposal¹ filed by his Excellency Mr. TCHARYKOW for the Russian delegation, providing that "sufficient time shall be granted Governments to put perfected mine equipment into use." In support of this proposal Captain BEHR expressed doubts respecting the existence of a protective apparatus generally adopted or even in the experimental stage and susceptible of rendering mines harmless. Moreover, said he, if a war should break out on the morrow of the adoption of a project prohibiting certain kinds of mines, States would find themselves deprived of a very important means of defense. It would therefore seem proper in all the cases indicated to give Governments the necessary time to furnish their navies with the new apparatus required by the Convention. The delegation of Great Britain did not oppose this view, provided that the time be fixed in the Convention.

When the committee of examination took up this question the term of three years was at first proposed as being sufficient, but it was objected to by several members of the committee. Rear Admiral SHIMAMURA remarked "that the adoption of such a period of time would result, during such time, in all kinds of mines being made use of, however dangerous they were, and these not only in territorial waters, but even within the immediate sphere of the belligerents on the high seas, which would create great dangers for neutral shipping. Thus the result obtained after these long deliberations would be sensibly reduced.

On the other hand, it was at the same time maintained that as the technical difficulties vary in respect to the different conditions laid down for the construction of the different kinds of mines provided for in the project, it would also be necessary to vary the periods of time to be granted Governments; especially, a period of eighteen months would suffice for the transformation of the mines mentioned in paragraphs 1 and 3 of Article 1. However, the delegation of Austria-Hungary maintained that any period fixed in advance would be unacceptable for States not already possessing in their navies certain of the perfected apparatus required by the Convention. Rear Admiral HAUS declared in a memorandum read in the committee that—

Especially with regard to the mines referred to in paragraph 2 of Article 1, the Austro-Hungarian navy has not at the present time apparatus rendering harmless anchored automatic contact mines when they break loose from their moorings. In order to conform to the clause in question, the Austro-Hungarian navy would therefore be under the necessity of proceeding to a transformation in its mine material, and for this transformation no period fixed in advance could be accepted, as a measure of this kind contains independently of individual volition an element of uncertainty that is inconsistent with entering into a formal engagement that perhaps could not be fulfilled.

[423] In every improvement in technical matters the time when one may reach

¹ Annex 18.

a satisfactory solution of a problem under study can scarcely be indicated in advance. Even if the scientific principle upon which the invention to be made rests were most simple from a theoretical point of view, obstacles absolutely unforeseen and very often difficult to overcome may at any turn occur to prevent the practical realization of the idea.

It is also necessary not to lose sight in the case before us of the fact that it would not be sufficient to construct an apparatus of perfect action by means of which a mine on breaking from its moorings would be automatically rendered harmless; there is equally the problem, and this seems to me to be of no less importance, of giving the apparatus in question such a construction that the other mechanical parts of the mine are not altered to the prejudice of its military value, so that the mine remains simple and not dangerous to handle without losing its effectiveness. It is only after having tested the apparatus to be constructed from different points of view, which in all probability will necessitate a series of lengthy experiments, that we can accomplish the change in the material of mines and then indicate approximately the time in which this operation can be brought to an end.

Now if in existing circumstances we were to fix in conventional form a period running from now on for the adoption of perfected mines, and if at the expiration of the time the change in question were not yet executed by one of the contracting Powers, this latter would find itself in a most embarrassing situation. For it would be obliged, if a war should break out in the interval, either to renounce the use of mines not yet converted or to fail in its conventional engagement. Both of these eventualities must necessarily be obviated. It therefore seems to us that if we take seriously the engagement in question, we cannot accept a period fixed in advance in the matter.

In accordance with these ideas the delegation of Austria-Hungary proposed¹ to omit the period of three years and to add to paragraph 2 of Article 1 a new provision worded as follows:

The maritime Powers which do not at present own these perfected mines, and which consequently could not at present be a party to this prohibition, undertake to convert, as soon as possible, the *matériel* of their mines so as to bring them into conformity with the foregoing condition.

The memorandum of the Austro-Hungarian delegation concluded with these words:

The fact that the conversion of mines is desirable not only for humanitarian reasons but also in the very interest of the Powers, offers a sufficient guaranty that the undertaking set forth in the above proposal will be faithfully carried out. In this way the humanitarian aim in view will be attained as soon as the means are provided. To do otherwise and to accept a particular period measured from the present for the conversion of mines would be, in the opinion of the delegation of Austria-Hungary, to make an engagement with a mental reservation which evidently would hardly be in harmony with the absolute obligation resulting from a conventional stipulation.

As to the unanchored mines referred to in the first paragraph of Article 1, the delegation of Austria-Hungary entirely supports the observa-

¹ Annex 27.

tions presented on this subject by the naval delegate of Great Britain, and thinks that we might well get along without a provision analogous to that just mentioned or of any other provision fixing a definite time.

[424] As to the provision of the second paragraph of Article 5, the delegation of Austria-Hungary has no proposal to make, as the clause in question seems to it unacceptable in principle.

The majority of the committee supported, as to the mines referred to in paragraph 2 of Article 1, the view of the Austro-Hungarian delegation, whose proposal relative thereto was accepted by eight votes to four, with five abstentions. But it was decided that the same provision should be applied to the apparatus mentioned in Article 6 in order that the mines there contemplated should likewise be the subject of an engagement by the Powers to furnish themselves therewith as soon as possible. Accordingly it was necessary to assign to this provision a different place than that proposed by the delegation of Austria-Hungary; it was thought that a special article should be made of it to be placed in this last chapter.

As to unanchored automatic contact mines it seemed equally necessary to fix a period for the change of existing material. One year, counted from the coming into effect of the Convention to be concluded, was deemed sufficient by the majority of the committee by twelve votes against five abstentions; it is to these considerations that the present form of paragraphs 1 and 3 of Article 9 is due.

There remained the question of the time to be fixed for the mines mentioned in paragraph 2 of Article 5. For this a British proposal,¹ offered in agreement with the delegation of Japan, was adopted by nine votes to two and six abstentions to the following effect:

Until a belligerent is provided with mines constructed so as to fulfill the condition contained in the second paragraph of Article 5, it is forbidden to place anchored automatic contact mines beyond the limits fixed by Articles 2 to 4.

By this provision, which appears as paragraph 2 of the article in question, and which is naturally accepted only by the States that do not object to the admission of paragraph 2 of Article 5, while avoiding the fixing of a delay for the putting into use of mines answering the requirements of paragraph 2 of Article 5, there is introduced an indirect sanction by forbidding the use of mines not answering the conditions laid down in the said article outside of the limits established by Articles 2 to 4.

Captain OTTLEY, in support of his proposal, put the question, whether mines that do not possess safeguards should be used elsewhere than in territorial waters before mines fulfilling these conditions are available? A negative answer should be given this question.

The opinion (said he) that international law permits the use of unperfected automatic mines everywhere beyond territorial waters where the immediate sphere of the activity of belligerents lies, seems rather pessimistic. It will perhaps be more exact to say that it was rather the lack of a special law on this subject that caused the unrestricted use of mines of this dangerous type during the recent war in the Far East.

¹ Annex 28.

The deplorable effects of such use with respect to merchant vessels and neutrals have been pointed out to us by our colleague from China. The conscience of the human race is now awakened, and it has become our absolute duty to take such measures that in the future these terrible events will never be repeated.

Therefore (concluded he) I sincerely beg my colleagues to insist that [425] in the future mines of the unperfected kind that were used in the Far East shall never be allowed.

ARTICLE 10

The stipulations of the present Convention are concluded for a period of five years from the date on which the present Convention takes effect.

The signatory Powers express the hope that they may have occasion to resume consideration of the question of the use of submarine mines before the expiration of the period provided in the foregoing paragraph.

This article may be passed without comment; it was accepted by seven votes against five. His Excellency Count TORNIELLI, with a view to facilitating a revision of the present Convention, especially on account of the technical difficulties which on several occasions have come up in the course of the discussions in the committee, proposed that the Convention be concluded for a period fixed in advance. The term of five years proposed by Rear Admiral SIEGEL was accepted after some hesitation between this term and a longer term proposed by the English delegation, and after the rejection of a proposal of Rear Admiral SHIMAMURA, supported by Colonel TING (by seven votes to five), fixing the duration of the Convention to the next Conference. It is to be noted that Colonel TING gave notice that he would take up this last proposal again before the Commission.

The *varu* contained in the second paragraph completes to a certain degree the provision of paragraph 1 by urging the conclusion of a new agreement to replace the present Convention; it was adopted unanimously on the motion of Rear Admiral SIEGEL.

IX

Before closing this report it is necessary to speak of a question which was debated in the subcommission and in the committee of examination, but which did not result in the insertion of an express provision in the draft; to wit, the question of the responsibility that might arise out of the laying of automatic submarine contact mines.

Here again we find a proposal on the part of the delegation of the Netherlands,¹ according to which an article of the following tenor would be added at the end of the regulations:

The loss of non-hostile personnel or material caused by the placing of mines outside of notified regions must be compensated for by the Government that laid them.

In support of this proposal, his Excellency, Vice Admiral RÖELL expressed the wish of the Netherland delegation to cooperate in finding a formula regulating the indemnity due for damage caused by a want of precaution on the

¹ Annex 12.

part of Governments. Although a satisfactory solution was very difficult to formulate, he nevertheless believed that the establishment of a principle setting forth the responsibility would be indispensable.

An analogous proposal was presented by the delegation of Brazil¹ as an addition to its amendment on the laying of mines by neutrals; Captain BURLAMAQUI said that "the calculation of the damage should be made in an ordinary suit; in case of disagreement the fixing of the indemnity should rest with the Permanent Court of Arbitration, to which the interested States [426] should send within six months after the accident all documents necessary for the defense of their rights. The payment of the indemnity should take place three months after the Court of Arbitration gives judgment."

The general principle outlined in these proposals was opposed by no one; it was recalled that the Institute of International Law, in its session at Ghent, had also answered the question in this sense. "A violation of one of the preceding rules" (so read the provisional text adopted by the Institute) "entails responsibility therefor on the part of the State at fault."

But on the other hand attention was drawn to the practical difficulties in applying the general rule by which, according to the expression of his Excellency Count TORNIELLI, "he who causes damage unjustifiably should make reparation therefor." It would be decided that in certain regions the two belligerents might lay mines; which of the two would pay the damages if unfortunately a peaceful ship should be destroyed in a region where the two belligerents had made use of submarine mines? And how could it be proved which State was at fault?

In presence of these objections, his Excellency Vice Admiral RÖELL proposed, in order to ensure a wider application of the principle, to make no mention of fault in the placing of mines and to extend the responsibility even to a chance case and without there being any infraction of the adopted rules on the part of the State that has made use of them. The laying of mines should in itself suffice to involve the responsibility of the State that has made use of a weapon so dangerous for peaceful navigation. This extension of the principle could not secure a majority vote; it was rejected by five votes to three, with eight abstentions; several among the naval delegates expressly declared that they must refrain from voting upon the strictly legal question. But on the proposal of his Excellency Mr. VAN DEN HEUVEL it was decided by the committee that it would not be necessary to make any express rule respecting the question, inasmuch as the general principles of law are sufficient to solve all cases that may arise. Indeed, any legitimate mine-laying could not involve liability, and there would be no reason to depart in this matter from rules that are applied to the other operations of war. If there is a question of damage caused by unlawful use in contravention of adopted rules, the general principles of law equally suffice to lay the responsibility upon the State at fault. The question of difficulties in proof should not be brought into the discussion: it could not in any way lead to modifications in the material rules of law to be applied. With this in mind the committee refrained from adding any provision on this subject.

Such, gentlemen, is the project of the regulations we have the honor to submit to the judgment of the Commission: it represents a first attempt to

¹ Annex 13.

regulate in an international convention this difficult and relatively new subject. We believe, however, that if it is adopted by all States in its essential provisions and applied in harmony with the spirit that has originated it, an important step forward will be made in the path of progress and civilization.

[427]

Annex B

DRAFT REGULATIONS CONCERNING THE LAYING OF AUTOMATIC SUBMARINE CONTACT MINES

ARTICLE 1

It is forbidden:

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who laid them ceases to control them;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;
3. To use torpedoes which do not become harmless when they have missed their mark.

ARTICLE 2

It is forbidden to lay anchored automatic contact mines beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line, as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

ARTICLE 3

The limit for the laying of anchored automatic contact mines is extended to a distance of ten nautical miles off military ports and ports where there are either military arsenals or establishments of naval construction or repair.

As military ports are considered those ports which have been decreed as such by the nation to which they belong.

ARTICLE 4

Off the coasts and ports of their adversaries, the belligerents may lay anchored automatic contact mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports which are not military ports, unless establishments of naval construction or repair belonging to the State are situated therein.

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

ARTICLE 5

Within the sphere of their immediate activity, the belligerents have likewise a right to lay anchored automatic contact mines outside the limits fixed in Articles 2 to 4 of the present regulations.

Mines used outside the limits fixed in Articles 2 to 4 must be so constructed as to become harmless within two hours at most after the person using them has abandoned them.

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ARTICLE 6

When anchored automatic contact mines are used, every possible precaution must be taken for the safety of navigation.

The belligerents undertake, in case these mines should cease to be under surveillance, to notify the danger zones, as soon as it can be done, by a notice to ship-owners, communicated also to the Governments through the diplomatic channel, and to do their utmost to render them harmless within a limited time.

ARTICLE 7

Any neutral State which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerent States in the use of similar mines.

However, a neutral State shall not anchor mines outside the limits indicated in Article 2.

A neutral State must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice shall be communicated at once to the Governments through the diplomatic channel.

ARTICLE 8

At the end of the war, at the latest, the signatory States shall be obliged to do all in their power to remove, respectively, the mines which they have each laid.

As regards anchored automatic contact mines which one of the belligerents may have placed along the coasts of the other, the signatory States agree to notify the other party of their location, and each State must proceed with the least possible delay to remove the mines in its own waters.

ARTICLE 9

The signatory States which do not at present own perfected mines of the kind contemplated in the present regulations, and which consequently could not at present carry out the rules laid down in Articles 1 and 6, undertake to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

Until a belligerent has become supplied with mines constructed so as to answer to the conditions of Article 5, paragraph 2, he is forbidden to place anchored automatic contact mines outside the limits fixed in Articles 2 to 4.

It is forbidden to use unanchored automatic contact mines which do not answer to the condition stipulated in Article 1, paragraph 1, one year after the present Convention goes into force.

ARTICLE 10

The stipulations of the present Convention are concluded for a period of five years from the date on which the present Convention takes effect.

The signatory Powers express the hope that they may have occasion to resume consideration of the question of the use of submarine mines six months before the expiration of the period provided in the foregoing paragraph.

SIXTH MEETING

SEPTEMBER 19, 1907

His Excellency Count Tornielli presiding.

The meeting opened at 2:30 o'clock.

The President makes the following address:

GENTLEMEN: At the beginning of yesterday's meeting I stated to you the very serious interests that all Governments have in finding common bases for the regulation of the questions relating to the laying of mines. From that point of view the results of our last meeting were certainly not satisfactory. Must they be considered as final?

I thought so on leaving here two days ago. I am no longer authorized to think so to-day in an absolute way, as I find before me a new proposal of the Netherlands concerning certain localities where mines should be permitted to be laid. On the other hand one of our most learned colleagues, his Excellency Mr. HAMMARSKJÖLD, the eminent jurist whom Sweden has sent us and who has helped us on so many occasions to find the necessary solutions, has offered, I am told, to reconstruct the crumbling edifice from the foundation.

As for myself, gentlemen, I shall put all the good-will possible into it, and if you will do me the honor to second my efforts, all hope of reaching a satisfactory conclusion will not appear to be entirely lost.

When our last meeting adjourned, Article 6 had just been adopted. We were beginning the examination of Article 7. His Excellency Sir ERNEST SATOW, at that moment put to us a question of a general kind. He wished to know whether the Commission was in favor of omitting Articles 2 to 4, that is to say, all the rules restricting the area in which the use of mines will be permitted. Did he fear that the votes already taken by the Commission could be interpreted in the sense that the Conference impliedly admits the liberty of laying mines everywhere without any limitation?

Our reporter thought, with a certain number of others of us, that the discussions in the first subcommission as well as those held in the committee of examination had had the result of evolving the generally accepted opinion

that, while it is permitted to employ unanchored mines everywhere, provided they become harmless within a very short time, for anchored mines, on the contrary, limitations are necessary as to area, that is to say, rules should be established concerning the places where it is permissible to lay these machines.

The opinion expressed on this subject by our reporter and shared by several among us was based also on the tenor of the proposals that the subcommission at first and later the committee had to examine.

You have perhaps no clear recollection of these proposals. But they never-

theless exist among our records. Italy,¹ Japan² and Russia³ are the only Powers which in their proposals dealt only with the conditions under which mines should be constructed in order that they may be permitted.

Great Britain, in its first proposal⁴ and in some amendments and later proposals, the Netherlands in several amendments,⁵ Spain⁶ and the United States⁷ have all showed us their anxiety to regulate the laying of mines as regards the area where they may be used.

Germany, under the form of two amendments to the British proposal, brought before the subcommission at first, and later the committee, proposals with reference to the localities of mines. Other proposals that were printed or written and distributed to the members of the committee came to us also from the British, Japanese and Netherland delegations. All these proposals and these amendments were tangled together when the progress of the work of the committee was made easier by the summary of the proposals originating in different countries which the German delegation has had distributed among us and which is entitled "Proposal of the delegation of Germany."⁸

In this proposal are formulated, under Nos. I to VI, the proposals of the different countries which were accepted by our colleagues from Germany. I have this print before me. Perhaps you will wish to have it read. In the committee it enabled us to get our bearings. It will probably furnish you with some suggestions.

I

United States, Japan, Germany

The laying of automatic contact mines is permitted to belligerents only in their territorial waters and those of their adversaries, and in the area of the immediate activity of the belligerents.

II

Japan

Unanchored automatic contact mines are forbidden with the exception of those constructed in such a way as to become harmless after a limited time, so as to offer no danger to neutral vessels.

III

United States

Anchored automatic contact mines which do not become innocuous on getting adrift are prohibited.

¹ Annex 10.

² Annex 11.

³ Annex 18.

⁴ Annex 9.

⁵ Annex 12.

⁶ Annex 14.

⁷ Annex 17.

⁸ Annex 23.

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IV

United States, Netherlands, Germany

If anchored contact mines are employed, all necessary precautions must be taken for the safety of legitimate navigation.

The belligerents undertake especially in case these mines are left to themselves, to notify as soon as possible the danger zones to the public, or to render them harmless within a limited time, so that a peril to legitimate shipping may, as far as possible, be removed.

V

Russia

A sufficient delay will be accorded the Governments in which to put into use the apparatus of perfected mines.

VI

England

'At the latest, at the end of the war each belligerent removes the mines placed outside its territorial waters. Moreover, belligerents mutually communicate the necessary information as to the placing of the automatic mines that each has laid along the coasts of the other, and each belligerent or neutral must proceed as soon as possible to the removal of the mines found in its waters.

As you know, no minutes were kept of the meetings of your committee of examination. This was decided on in order to facilitate the rapid exchange of views which sometimes takes on the character of simple conversations. But the proposals that have been printed and distributed remain, and if I permit myself to remind you of them, without gainsaying the full and complete right that each one of us preserves of modifying and even of completely changing his way of thinking during the course of the debates and even afterwards, as the votes have only a provisional character, it is because your president has the duty to justify by the explanations that he gives you, the work of the committee first and then that of your president himself who has laid before you the result of serious and conscientious work.

Perhaps, gentlemen, in comparing the proposal that the delegation of Germany has handed the committee with the draft regulations that the latter has submitted to you, you might be inclined to suppose that some misunderstandings have crept into the discussions of the preceding meeting. If that is so, do you think that there is still time to get rid of them?

Your president is ready to follow the directions that the committee wishes to give him. But, in the absence of other indications, and unless the British delegation tells us that it does not insist upon the motion it made at the close of the meeting of the day before yesterday, I cannot do less than ask the Commission its views on a question that I shall put as follows: Does the Commission wish that the laying of mines be subjected to any restriction as regards the area where they may be placed?

[432] It will necessarily depend upon the answer given to this question whether we can resume the discussion on other proposals concerning the area

where the use of mines should be authorized, or, indeed, whether we are forced to abandon this subject of discussion definitively.

As to myself I see only this one way of putting the question. But if other opinions exist, the floor is given to those who wish to express them.

His Excellency Mr. Hammarskjöld makes the following declaration:

As you know, the votes of the day before yesterday on Articles 2 to 4 had results that were not very decisive. In these circumstances it is very natural to ask ourselves whether these articles containing absolute prohibitions as to the locality of anchored mines can be usefully preserved, or if, on the contrary, we must resign ourselves to omitting them and leaving wholly aside the question of the limitation of the area where mines can be used. However, between these two opposite solutions, there is a middle path which consists in preserving these articles no longer as absolute prescriptions, but as conditional provisions. It has seemed well to me, as a compromise measure, to submit this intermediate solution to the examination of the Commission.

Along this line of thought I have conceived the following plan:

Combine Articles 2 to 4, with the exception of the last paragraph of Article 4, which would form a separate article, into one article; and then commence this article with the following clause: "*Except in the case of an imperious military necessity, the contracting Powers engage to observe the following rules as to the laying of anchored automatic contact mines*":

It is true of course that the changing of the three articles adopted the day before yesterday into paragraphs of the new Article 2 might render necessary some slight modifications, especially in form, of these articles. But in my opinion that is a secondary question. We must first know whether the Commission wishes to accept the compromise principle of laying down conditional and elastic rules on the subject of the laying of mines.

Indeed, it does not seem impossible to reconcile the different opinions. The delegations that have made proposals or have voted in favor of an area limitation in the use of mines could tell themselves that, if it is impossible to reach an international understanding on absolute rules, it will nevertheless be worth something to be able to give utterance to the principle that the use of mines is limited to certain regions even though exceptional cases are admitted when the rule loses its obligatory force. On the other hand, the delegations that have combated or are now combating this very principle, take their stand on the consideration that cases may arise when in the supreme interest of national defense a military commander could not renounce the use of mines wherever he may be; that consequently rules which cannot always be respected must not be laid down. Now, this consideration does not apply to the plan that I propose and which suspends the restricting rules in the case in question. The liberty of action of military commanders would not be hampered by provisions that remind them of the duty recognized by all, that of not employing, unless necessary, these engines which are so dangerous for peaceable navigation. It even seems that the essential idea that has inspired the proposals establishing exceptions for theaters of war or for the immediate neighborhood of hostilities is no more than this: it is necessary to admit exceptions for exceptional cases, and it is necessary not to tie the hands of combatants in an absolute manner when they are responsible for the success of military operations.

[433] I admit that the intermediate plan proposed by myself constitutes only

a modest advance, but in any case it is an advance, one step forward in the direction whither, as I am convinced, we all desire to march.

His Excellency Sir **Ernest Satow** remarks that the British delegation in the last meeting opposed the adoption of Article 5 of the draft, for the purpose of assuring protection to the commerce of neutrals and of preventing the disasters that took place in the Far East on the occasion of the last war from being repeated in Europe. The British delegation thinks it necessary that the Conference should not separate before concluding an agreement regarding the laying of mines. If this agreement is not to be reached, the different delegations will not be able to support their responsibility before public opinion. It is for this reason that the British delegation rallies to the intermediate and conditional proposal that has been made to the Commission by his Excellency the first delegate of Sweden.

The **President**, after observing that the acceptance of the Swedish proposal implies the limitation of the use of mines as regards area and that the proposal in question, if adopted, would be substituted for Articles 2 to 4 as drawn by the committee, reads the proposal made by his Excellency Mr. **HAMMARSKJÖLD**. It is thus worded:

Except in the case of an imperious military necessity, the contracting Powers agree to observe the following rules as to the place of anchored automatic contact mines:

1. It is forbidden to lay anchored automatic contact mines beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line, as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

2. The limit for the laying of anchored automatic mines is extended to a distance of ten nautical miles off military ports and ports where there are either military arsenals or establishments of naval construction or repair.

As military ports are considered those ports which have been decreed as such by the nation to which they belong.

3. Off the coasts and ports of their adversaries, the belligerents may lay anchored automatic contact mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports which are not military ports, unless establishments of naval construction or repair belonging to the State are situated therein.

His Excellency Mr. **Hammarskjöld** observes that the essential part of his amendment is in the preamble. He does not insist on the wording of the three articles, the examination of which could be adjourned until after the acceptance of the general principle.

The **President** opens the discussion on the Swedish proposal, which would constitute new Article 2 of the project.

[434] His Excellency **Réhid Bey** asks whether they are going to vote on the amendment as a whole or first on the preamble and then on the paragraphs. The Ottoman delegation would propose having the provisions of

Article 3 of the project extend to ports whose entrance is defended by forts and fortifications.

The **President** thinks that it is best to vote separately on each paragraph; meanwhile he takes note of the declaration of his Excellency **RÉCHID BEY**, which will be recorded in the minutes.

His Excellency **Mr. Léon Bourgeois** suggests that it appears to him necessary to have a division in the voting.

The very principle of the Swedish amendment being contained in the preamble, it is upon this principle that the Commission should at the outset pronounce itself.

His Excellency **Mr. Hammarskjöld** expresses the same opinion and asks the Commission to indicate whether or not it accepts the conditional plan of his proposal.

The **President** agrees with his Excellency **Mr. HAMMARSKJÖLD** and to the request of his Excellency **LÉON BOURGEOIS**. He puts the preamble to vote.

His Excellency **Baron Marschall von Bieberstein** asks for explanations of the vote about to be taken. How could they express themselves concerning the preamble that makes allusion to certain prescriptions unless those prescriptions have been taken into consideration?

His Excellency **Mr. Hammarskjöld** explains the compromise character of the solution proposed. Everybody knows the provisions of Articles 2 to 4 of the draft; the vote on the preamble is simply intended to put the question whether or not it is desired to keep these rules while making them conditional.

His Excellency **Mr. Hagerup** desires that the effect of the vote about to be taken be made clear. Is it wished to accept a conditional limitation based on military exigencies? That is the question. His adhesion to the Swedish amendment, says he, will have only a subsidiary bearing, being given the favorable vote on Articles 2 to 4 of the project which was given last Tuesday.

The **President** explains that if he put the whole of the Swedish amendment before the meeting at once it is because he had thought that the preamble was inseparable from the articles. Sections 1, 2, and 3 of the Swedish amendment contain, it is true, the same provisions as Articles 2, 3, and 4 of the draft; but while these provisions have an absolute character in the latter, they take a conditional character in the Swedish proposals submitted to the Commission. Does the Commission wish to place absolute limitations or conditional limitations on the use of anchored automatic contact mines? This is the meaning of the vote about to be taken.

His Excellency **Baron Marschall von Bieberstein** recalls that in the meeting of the 17th instant the German delegation voted against Articles 2, 3, and 4. To-day its vote will likewise be against the Swedish proposal because it does not admit any restriction either absolute or conditional.

His Excellency **Mr. Mérey von Kapos-Mére** speaks as follows:

The spirit of friendly agreement is too universal among us not to make us applaud every proposal advanced for the sake of reconciliation. We there-
[435] fore can only thank the first delegate of Sweden for the proposal that he has just offered. Nevertheless I question whether this proposal is adapted to win our votes. The preamble, as I understand it, establishes an exception, to wit, that of an imperious military necessity. Now, in my opinion, no State, no navy will make use of mines—of those engines that are dangerous

not only for the adversary but also for neutral navigation and even for him who makes use of them—unless in case of an imperious military necessity. Consequently I do not well see, for my part, the difference between Articles 2, 3, and 4 of the regulations and the proposal of his Excellency Mr. HAMMARSKJÖLD, for what in the latter seems to be an exception would in reality be the rule. It is only to give the reason for my negative vote that I have permitted myself to take the floor.

As no one else desired to speak, the general discussion was closed. A vote was then taken upon the preamble of the Swedish proposal which was rejected by 13 nays against 9 yeas, with 16 abstentions; there were 6 absent.

Yeas: Spain, France, Great Britain, Italy, Japan, Norway, Netherlands, Portugal and Sweden.

Nays: Germany, United States of America, Austria-Hungary, Brazil, Chile, China, Cuba, Ecuador, Greece, Montenegro, Roumania, Russia and Serbia.

Not voting: Argentine Republic, Belgium, Bulgaria, Colombia, Denmark, Dominican Republic, Haiti, Mexico, Panama, Paraguay, Persia, Salvador, Siam, Switzerland, Turkey, Venezuela.

Absent: Bolivia, Guatemala, Luxemburg, Nicaragua, Peru and Uruguay.

The **President**, after stating that the principle of the Swedish proposal has not been accepted by the Commission and that consequently there was no reason for continuing the debate, returns to the examination of the draft as it was drawn up by the committee.

His Excellency Vice Admiral Jonkheer Röell, having declared that he would later take the floor to explain the meaning of the amendment he filed in the name of the delegation of the Netherlands, the **President** opens the discussion on Article 7 of the draft,¹ which he reads. The first paragraph of this article is adopted without discussion.

The **PRESIDENT** remarks that the second paragraph of this article no longer has any reason for existing since it only refers to Article 2 of the draft, which has not been adopted by the Commission.

His Excellency Sir Ernest Satow asks the first delegate of Norway whether he holds to the suggestion he made in the meeting of September 17. His Excellency Mr. HAGERUP had then suggested, in case Articles 2 to 4 were omitted, the adoption of the following wording: "A neutral State cannot anchor mines outside of territorial waters."

His Excellency Mr. Hagerup explains that his suggestion was made with a view to secure the adhesion of the delegation of Russia, as the latter had declared that it would accept the three paragraphs of Article 7, with the exception of the wording of the second line of the second paragraph.

[436] His Excellency Mr. Tcharykow, referring to the declaration made in the meeting of September 17, declares that the delegation of Russia will vote for the second paragraph of Article 7, provided the wording is modified. He thinks it wise to retain the paragraph in question but he requests that a more exact statement be adopted.

He cannot accept the expression "territorial waters" as this term cannot be defined; he would consequently prefer the formula of "three marine miles" contained in Article 2.

Mr. Vedel declares that it appears to the Danish delegation that there is

¹ See annex B to the minutes of the fifth meeting.

scarcely any need of fixing conventional rules for the placing of mines by neutrals, if provisions of that nature are not adopted for belligerents. He proposes that paragraph 2 of Article 7 of the draft be stricken out.

His Excellency Mr. Hagerup thinks that if a fixed limit is desired, it is necessary to accept the second paragraph of Article 7. The limitation proposed by Mr. TCHARYKOW does not include bays, and that is the reason that he had proposed the formula of territorial waters. But if agreement cannot be had on this subject, he does not, for his part, see any disadvantage in dropping paragraph 2 of Article 7.

His Excellency Mr. Tcharykow says that in view of the declarations made by the delegations of Denmark and Norway he will not insist upon keeping the said paragraph.

His Excellency Sir Ernest Satow asks for the vote on the second paragraph and declares that the British delegation will vote to retain it.

A vote is then taken on the omission of paragraph 2 of Article 7, which is adopted by 17 yeas to 15 nays; there are 5 not voting and 7 absent.

Yeas: United States of America, Argentine Republic, Belgium, Bulgaria, China, Colombia, Cuba, Denmark, Ecuador, Spain, France, Greece, Haiti, Mexico, Panama, Paraguay, Sweden.

Nays: Germany, Austria-Hungary, Brazil, Chile, Dominican Republic, Great Britain, Italy, Japan, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Servia.

Not voting: Norway, Siam, Switzerland, Turkey, Venezuela.

Absent: Bolivia, Guatemala, Luxemburg, Nicaragua, Peru, Salvador, Uruguay.

The President after having announced the result of the vote, states that the paragraph has been rejected; there is no reason to seek a new wording. He passes to the third paragraph of Article 7, which is adopted without discussion.

He reads Article 8,¹ which is also adopted without discussion, and passes to Article 9.

ARTICLE 9

The signatory States which do not at present own perfected mines of the kind contemplated in the present regulations, and which consequently could not at present carry out the rules laid down in Articles 1 and 6, undertake to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

Until a belligerent has become supplied with mines constructed so as to answer to the conditions of Article 5, paragraph 2, he is forbidden to place anchored automatic contact mines outside the limits fixed in Articles 2 to 4.

It is forbidden to use unanchored automatic contact mines which do not answer to the condition stipulated in Article 1, paragraph 1, one year after the present Convention goes into force.

His Excellency Mr. Tcharykow declares that the delegation of Russia having voted against Articles 1 and 6 of the draft, cannot admit Article 9, which is connected therewith, without making reservation of paragraph 1.

The President takes note of this reservation.

His Excellency Turkhan Pasha makes the following declaration:

¹ See the fifth meeting, annex B.

The Ottoman delegation declares that it cannot bind itself to the systems of improvements which are not now universally known and that, consequently, in so far as its Government is concerned, it makes the putting into practice of the prescriptions of the articles mentioned in the first paragraph of Article 9, contingent upon the adoption and general application of suitable means of assuring the conditions aimed at by all the articles in question.

The **President** takes note of this declaration and asks if anyone opposes the omission of the second paragraph of Article 9, which is also connected with Articles 2 to 4 of the draft.

His Excellency **Sir Ernest Satow** is of the opinion that Articles 2 to 4 of the draft have not been rejected by the commission. As he has already remarked in the preceding meeting, these articles secured a small majority, it is true; but, in his opinion, it is not right to consider abstentions as negative votes. According to him these above-mentioned articles should be preserved in the draft and presented, in consequence, to the Conference.

His Excellency **Mr. Hagerup** desires to explain in a few words the declarations on the subject which he made in the meeting of day before yesterday. He had, by no means, the intention of saying that the votes cast on Articles 2 to 4 involved the omission of these articles.

He shares the contrary opinion of **Sir ERNEST SATOW**, that the favorable vote cast by the Commission applies to these articles. He felt impelled to add, however, and the minutes will bear him out, that these remarks as well as those of his Excellency **Mr. TCHARYKOW**, "were of a subsidiary nature and had for their object only to suggest a new wording for paragraph 2 of Article 7, in case Articles 2 to 4 should be eliminated." It seems to his Excellency **Mr. HAGERUP** that there can be no misunderstanding in regard to the meaning of this suggestion.

The **President** declares that it is the proprietary right of all to demand the presentation to the Conference of the articles adopted by the Commission by a majority vote. He recognizes also the truth of the theory defined by **SIR ERNEST SATOW**, that no interpretation can be placed upon abstentions. But there is also another point of view to be considered: it seems necessary that the Commission should make known its firm conviction regarding what should be presented to the plenary Conference for approval. Upon this point the personal opinion of his Excellency **Count Tornielli** is that only the articles which [438] have obtained an absolute majority, that is to say, one-half plus one of the votes cast, could be transmitted to the Conference with any chance of being adopted.

The **PRESIDENT** desires to know, therefore, if the Commission shares this view, or if, on the contrary, it thinks that articles having received any majority whatsoever should be placed in the draft regulations to be submitted to the Conference.

His Excellency **Baron Marschall von Bieberstein** declares that in his opinion, for the purpose of determining the majority, only the number of votes cast for or against a proposition should be taken into account, without taking into consideration the number of abstentions. He is of the opinion that it is inadmissible to interpret the abstentions as either for or against. To act otherwise is to direct a blow at the right of each one to abstain, for it must not be forgotten that abstention is, in itself, the manifestation of an opinion.

His Excellency Réchid Bey desires to explain that the negative vote cast by the Ottoman delegation was occasioned by the fact that it was unable to make in time the declaration which it has just made apropos of ports whose entrance is defended by forts or fortifications. This declaration having been recorded, the Ottoman delegation gives its support to Article 3.

The President advises his Excellency RÉCHID BEY that this amended vote is recorded and states that, in consequence, Article 3 will be considered as having been approved by 15 yeas against 10 nays. The discussion being exhausted with regard to paragraph 2 of Article 9 and no vote having been demanded upon this provision, it is considered as adopted.

The President then reads paragraph 3 of Article 9 and recalls that a British amendment proposed to modify this provision by omitting the word "*unanchored*" and substituting for the words "*to the condition of Article 1, paragraph 1,*" the words "*to the conditions of Article 1, paragraphs 1 and 2.*"

His Excellency Mr. Tcharykow declares that the delegation of Russia cannot accept paragraph 3 of Article 9, which is connected with Article 1, paragraph 1, a provision against which the delegation of Russia has voted.

Their Excellencies Baron Marschall von Bieberstein and Turkhan Pasha make the same declaration.

They are recorded.

The vote, having been demanded, is taken.

The result is as follows: 18 yeas, 11 nays, 8 not voting, 7 absent.

Voting for: Argentine Republic, Belgium, Brazil, Chile, China, Colombia, Cuba, Dominican Republic, Spain, France, Great Britain, Italy, Japan, Norway, Paraguay, Netherlands, Portugal, Sweden.

Voting against: Germany, United States of America, Austria-Hungary, Bulgaria, Greece, Montenegro, Persia, Roumania, Russia, Serbia, Turkey.

Not voting: Denmark, Ecuador, Haiti, Mexico, Panama, Siam, Switzerland, Venezuela.

Absent: Bolivia, Guatemala, Luxemburg, Nicaragua, Peru, Salvador, Uruguay.

[439]

ARTICLE 10

The stipulations of the present Convention are concluded for a period of five years from the date on which the present Convention takes effect.

The signatory Powers express the hope that they may have occasion to resume consideration of the question of the use of submarine mines six months before the expiration of the period provided in the foregoing paragraph.

The President reads paragraph 1 of Article 10 and states that in view of the amendment presented by the British delegation, the Commission finds itself confronted by two propositions: the first, that of the draft, gives to the Convention a duration of five years; while the second gives it a duration of 7 years, which period would be shortened if the Third Peace Conference closes its work before that time.

His Excellency Sir Ernest Satow recalls that in the preceding meeting it was stated that the British proposition was in the nature of a compromise between the original proposition of ten years and that of five years contained in the draft. He desires to add that the principle object animating the British delegation is to prevent any lapse between the two conventions, that is to say, the first shall remain in force until the completion of the one which is to replace it.

A vote upon the British proposition, having been demanded, is taken.

The British amendment is accepted by 21 yeas against 8 nays, 9 not voting; there are 6 absent.

The President, after reading paragraph 2 of Article 10 of the draft and of the British amendment referring thereto, shows that the proposed modification corresponds to that which has just been approved by the Commission; perhaps, under these circumstances, it will be considered unnecessary to proceed to a vote upon this amendment.

It is thus decided, and paragraph 2 of Article 10 is approved in the form of the British amendment.

The examination of the draft having ended, the President asks if the Netherland delegation maintains its proposition which has just been distributed¹ and which he reads to the Commission.

His Excellency Vice Admiral Jonkheer Röell sets forth the following considerations in support of the amendment in question:

GENTLEMEN: As you are aware, I had the honor in the first meeting of the first subcommission of the Third Commission, that of June 27, to present in the name of the Netherland delegation certain amendments to the British proposition on the subject of the employment of mines; one of these amendments stipulated that straits connecting two open seas should not be barred.

It was decided by the subcommission that this proposition should be sent with others to the committee of examination. The latter, as is stated very accurately in the remarkable report, after having subjected the said proposition to certain changes in form, after a long discussion in which the objections related principally to the difficulty of treating the delicate subject of straits, and after having heard the declaration of the delegation of Russia that this subject was not within the competence of the present Conference, decided upon the omission of every provision concerning straits. This question should thus remain outside

of the stipulations of the present regulations. On the other hand, the [440] committee established clearly that according to the stipulation of the Convention to be concluded there would be no change in the present status of straits; the latter were accordingly not affected in any way by the provisions for the employment of mines. It is clearly stated in that part of the report now before us that belligerents and neutrals have the right to sow in straits all sorts of anchored and unanchored mines, without any restriction whatsoever.

Although I regret personally a decision such as renders forever the passage of straits extremely dangerous to navigation, in reopening the discussion upon this subject I have no intention of reacting against the decision of the committee of examination; I accept that decision, although I consider it very deplorable. However, in studying the draft regulations I have been struck by the complete absence of any stipulation whatsoever calculated to formulate the decision of the committee of examination mentioned in the report. The result then is that, on one hand, the report states that straits are not covered by the stipulations of the regulations and that, on the other hand, the latter by the absence of any stipulation regarding straits, conveys the impression that straits fall legitimately within the scope of the provisions it decrees.

But it is absolutely essential to know the exact meaning; any uncertainty on this subject would give rise to grave difficulties between belligerents and neutrals

¹ Annex 12.

in time of war. Accordingly I am of the opinion that it is necessary to modify the report and also to mention straits in the regulations. As the report represents absolutely the decision of the committee of examination, I proposed to add to the regulations an Article 11 by the adoption of which there would have been agreement between the report and the regulations.

This agreement would be still assured if a provision of like purport were placed as a preamble or introduction at the head of the regulations.

It would be for the Commission to decide the place where this provision should appear, but it is above all essential that the regulations should not be mute upon this subject.

However, gentlemen, if you are, like myself, of the opinion that the dangerous inferences to be gathered from the provision should not be allowed to obtain, I judge that it will be necessary for you to reject my proposition, but with the declaration that straits fall legitimately and duly under the stipulations and interdictions mentioned in the regulations. In this case, the report to be presented to the Conference would state this opinion and not the contrary one.

His Excellency Mr. **Tcharykow** says that the declaration which the Commission has just heard has clearly set forth the difficulty which presents itself; he states, moreover, that Admiral **RÖELL** does not insist upon the maintenance of Article 11.

The Commission has then the choice between the insertion in the Convention of a new article and the modification of a passage of the report. It seems to his Excellency Mr. **TCHARYKOW** that it is preferable to adopt the second solution, the modification of the text of the report seeming the more easily effected.

His Excellency **Turkhan Pasha** believes it necessary to reiterate the declaration which has already been made by the Ottoman delegation on the subject of the Straits of the Bosphorus and the Dardanelles, and which has been inserted in the report.

The President advises his Excellency **TURKHAN PASHA** that record is made of this new declaration.

After an exchange of views between his Excellency Mr. **Tcharykow**, his Excellency Vice Admiral **Jonkheer RÖELL** and the **Reporter**, it is decided that

the latter shall modify the passage of his report relative to the use of [441] automatic mines in straits, and that with this in view he shall consult in advance their Excellencies **Messrs. TCHARYKOW, TURKHAN PASHA** and Vice Admiral **Jonkheer RÖELL** upon the modification to be effected.

The President, after having stated that the explanations which have just been exchanged closed the examination of the draft regulations concerning the laying of automatic contact mines, expresses the opinion that it would perhaps be well to proceed to a second reading of the draft before submitting it to the plenary Conference. The draft has received in truth some important modifications; certain of these provisions have only been approved by a small majority and, under these conditions, we should ask ourselves if they are likely to receive the approbation of the Conference. With a view to eliminating the possibility of a rejection, which could not but impress the public unfavorably, it would be well to examine first of all if the draft, as it emerged from the deliberation which has just terminated, forms a complete whole. **The President** then states that the Commission has still another decision to make; it is necessary that it indicate what system should prevail (that of the absolute

majority or that of the relative majority) for the transmission to the Conference of the articles of the draft. The personal opinion of his Excellency Count **TORNIELLI** is that only the articles which have received an absolute majority could be submitted to the plenary Conference with any chance of success.

His Excellency **Baron Marschall von Bieberstein** explains the difference which exists between the two systems of majorities: the absolute majority consists of one-half plus one of the number of voters, counting abstentions; the so-called relative majority is formed by a superior number of favorable votes without taking into account the number of voters. For his part, his Excellency **Baron MARSCHALL VON BIEBERSTEIN** is inclined to think that a relative majority in favor of an article is sufficient for it to be considered as approved by the Commission.

However, he begs that the **PRESIDENT** will be good enough to determine the rule to be followed in the matter.

His Excellency **Mr. Mérey von Kapos-Mére** states his opinion in the following terms: it is not precisely upon the question as to whether or not in establishing the absolute majority of votes it is necessary to count the abstentions that I desire to express myself. However, since this question has been brought up, I venture to express my opinion thereon. Our president is of the opinion that the absolute majority should be calculated according to the total number of delegates who respond to the roll call, comprising those not voting. The first delegate of Germany thinks, on the contrary, that it is necessary to consider as voting only those who respond by yea or nay. According to my opinion, it would be difficult to choose between these two systems, either of which seems to be justifiable. However, I think that, if it is decided to take account of probabilities, it would be necessary to give the preference to the system adopted by our president, the abstentions having in the majority of cases the character and the signification of negative votes.

However, if I am permitting myself to speak, it is above all to endorse warmly the proposition of our president to proceed, in the Commission, to a third reading of the regulations upon the employment of mines. For my part, I would go even further. At the moment when we have, so to speak, ended the discussion of the regulations, it seems to me necessary that we record in an exact and at the same time temperate manner the result of this discussion and above all of the result of the votes. It has already been stated on many sides that a very large part of these regulations have only received a small majority. The hope that between now and the plenary session of [442] the Conference this small majority may attain unanimity—or quasi-unanimity—which is necessary for a definitive convention, would hardly be justified. Under these conditions I ask myself if we should not from this minute sacrifice that part of these regulations which has no chance of being generally adopted. In personal conversations which I have had lately with my colleagues, it has been objected that this manner of procedure would create an unfavorable impression. I confess that I cannot share this opinion. What does public opinion demand and what has it a right to demand of us? The public was, with justice, very alarmed by the fact that during and even a long time after the late war in the Far East pacific navigation suffered disasters caused by mines which had broken loose from their moorings without having become harmless.

But we are in absolute agreement that it is necessary to seek and put into use, from the moment of its discovery, an apparatus which would render mines harmless within a very short lapse of time. In this way we have given to the public and—what is still more important—to neutral commerce, every satisfaction they might have expected.

Our opinions are divided only when there is a desire to introduce into the articles of these regulations the question of the laying of mines. But as soon as there was accord upon the engagement to render mines harmless immediately upon breaking loose from their moorings, the question of where they might be laid lost much of its importance for public opinion and for neutral commerce. I am, consequently, of the opinion that we should act wisely if, instead of presenting to the plenary session of the Conference and to public opinion a regulation, part of which would be fictitious—and would not obtain a sufficient number of votes, we should decide upon the occasion of the third reading to sacrifice the articles in question.

It is only thus that these regulations which, in spite of everything, constitute a considerable progress, would have the character of a practical, serious and, I dare to say, sincere stipulation.

His Excellency Mr. **Léon Bourgeois** desires to explain in a few words his way of looking at this question of majorities. It is necessary, according to him, to make a distinction between two systems of balloting, one of which suffices in proceeding to the examination of a draft in Commission and the other of which should precede the sending to the Conference of the draft approved by the Commission. It is evident that the relative majority is sufficient in the first case and his Excellency Mr. **LÉON BOURGEOIS** shares in this respect the opinion expressed by his Excellency Baron **Marschall**; he will make, however, a reservation upon the necessity of a *quorum*, that is to say, of a minimum number of voters, a third or a fourth, for example, of the members of the Commission. This condition of the quorum being fulfilled, the relative majority suffices in order that a provision may be, in the course of the deliberation in Commission, considered as approved.

But it is otherwise when the question of voting to submit a draft to the plenary Conference is involved. In this case it is necessary above all to consider the chances for the success of the draft. Whatever difference there may be between the favorable and unfavorable votes, if there has been only a small number of voters, the approbation of the Conference should be considered doubtful, and upon this point his Excellency Mr. **LÉON BOURGEOIS** shares the opinion of his Excellency Mr. **MÉREY**; if there has been a large number of abstentions, the latter should be regarded as negative votes which there is very little reason to believe would be changed before the plenary Conference into affirmative votes.

[443] To sum up, what should be considered above all is that a draft in order to be submitted to the Conference should have received in the Commission a sufficient number of favorable votes. The consequence of this requirement is that all the efforts of the Commission should be concentrated on bringing into being a draft fulfilling these conditions by making an appeal to the general goodwill, on one hand, and, on the other hand, by knowing when it is necessary to sacrifice those provisions which are not likely to be finally adopted.

His Excellency Baron **Marschall von Bieberstein** supports entirely the

system which has just been explained by his Excellency Mr. LÉON BOURGEOIS upon the question of absolute and relative majorities.

His Excellency Mr. Tcharykow states that he is in entire accord with the preceding orators and expresses the opinion that it will not be impossible to form draft regulations with the articles which have received sufficient majorities. Article 1, paragraphs 2 and 3, decree on one hand provisions of the greatest importance. A second group, consisting of Articles 6, 7, 8, 9, and 10, accepted with majorities almost equivalent to unanimity, contain provisions which interest pacific navigation to the highest degree. These two groups of articles could be united and would thus form a draft which would be of a nature to be approved by the Conference.

On the contrary, conformably to the opinion expressed by his Excellency Mr. MÉREY, the provisions concerning the laying of mines should be left out, since these provisions are of only a limited interest and have not the same chances of success.

His Excellency Mr. Hagerup is of the opinion that the Commission has the right to present to the Conference a provision accepted by a majority vote, even if that majority is not equal to the absolute majority of the members of the Commission. This manner of procedure has been followed by the Second Commission on the occasion of the draft concerning neutrals in belligerent territory. But the Commission may, of course, decide not to take before the Conference a proposition which has not secured a sufficiently large majority to assure its acceptance by the Conference. A simple question of expediency is involved and, in arriving at a conclusion with regard to Articles 2 to 4, there should, according to Mr. HAGERUP, be taken into consideration the probability of securing an agreement upon the other parts of the draft. Those who have voted Articles 2 to 4 and who have obtained the majority in favor of their opinion, have not, it would seem, any reason to abandon it if they have no guaranty of a positive result for the other provisions of the draft. But the first paragraph of Article 1 has obtained only a majority of 14 votes and many of the Great Powers have voted against it. For the second paragraph of Article 1, there was unanimity, it is true, but the value of this result is perceptibly lessened by the fact that in Article 9 many Great States are reserving the right to employ, without any time limit, the engines prohibited by Article 1, paragraph 2, until they have perfected their mine *matériel*. It is to be seen that the probability of quasi-unanimity is not for the moment very great if Articles 2 to 4 are eliminated. But it is perhaps permissible to hope that this situation will change, if after having closed our debates, we should proceed, several days later to a new reading. I cannot close without endorsing the words of our president at the opening of our meeting to-day, when he said that the divergences of opinion which have manifested themselves in the discussions of the Commission are very much greater than those which the committee of examination could have foreseen in comparing the different propositions submitted to its study.

[444] His Excellency Sir Ernest Satow desires to repeat that in the opinion of the British delegation it would be of advantage to present to the Conference the draft regulations such as they have been amended by the votes of the Commission. But considering the fact that there seems to be a majority

who are of the contrary opinion, he states that he will reserve his own opinion upon this question.

However, his Excellency Sir ERNEST SATOW desires to ask the members of the Commission who have voted for the German proposition relative to the interdiction for five years of the employment of unanchored automatic contact mines, and those who have voted for the provision of the draft forbidding the employment of mines which do not become harmless one hour after being laid, if there is not some means of reconciling these two votes by means of a joint provision. In reality the principles of these two provisions harmonize, and it may perhaps be possible to find a basis of agreement.

On the other hand, as to Article 4, paragraph 3, relative to the interdiction of the employment of mines to effect a blockade, might not the five negative votes, which have been cast against 24 favorable votes, be withdrawn?

The **President** states that in view of the divergences of opinion which have just manifested themselves, the necessity of postponing the discussion, as he had suggested a few moments before, should be perfectly apparent to the Commission. He therefore proposes that between now and the next session the bureau be authorized to retouch the draft so that the Commission may have before it a new text of such a nature as to be approved by the large majority of its members.

It is thus decided, and the meeting adjourns at 5:30 o'clock.

SEVENTH MEETING

SEPTEMBER 26, 1907

His Excellency Count Tornielli presiding.

The meeting opened at 2 o'clock.

The minutes of the meetings of September 17 and 19 are approved without observations.

The **President** announces that he has received a letter from his Excellency the first delegate from China, dated September 25th, which he reads:

Mr. **PRESIDENT**: Having been obliged to absent myself from the meeting of the 17th instant, in order to attend a ceremony of the Court of the Netherlands, I pray your Excellency to be good enough to change in the table of votes¹ cast upon the draft regulations concerning the laying of automatic contact mines, the absence of our delegation into favorable votes upon all the articles mentioned in the above-mentioned table.

At the same time I beg to inform you, Mr. President, that the delegation of China endorses the amendment proposed by the delegation of Colombia to the draft regulations in question.

Accept, Mr. President, etc.,

LOU TSENG-TSIANG.

The **President** observes that this declaration of vote relates to the ballots which took place in the meeting of the Third Commission of September 17, the table of which was published and distributed shortly after the meeting. He states that, even in considering the absence of the delegation of China as favorable votes to the propositions which were put to a vote in the said meeting, none of these propositions would have received an absolute majority.

The Ottoman delegation has had published and distributed an amendment to Article 3 of the draft elaborated by the committee of examination, which served as a text in the deliberations of September 17 and 19.

[446] The **PRESIDENT** continues in the following terms:

In virtue of the authority which has been vested in him by the Commission, the president of the Commission has the honor to present to you a new text of the regulations in which are omitted the provisions which did not receive an absolute majority of votes in the preceding discussions.

Article 3 of the first text is eliminated in the second which you have under your eyes. The amendment of the Ottoman delegation need not then be taken into consideration unless someone demands that the said Article 3 be restored in the new wording of the draft.

This proviso does not seem likely to be realized.

We have come now to the second reading of the draft regulations, which

¹ In the present volume these votes have been inserted in the minutes of the fifth meeting of the Third Commission and the table has been omitted.

your president, with the president of the committee of examination, has amended according to your desire by taking into account only those provisions of the first draft which, on the occasion of the first reading, had received an absolute majority of votes. This will not prevent the delegations which desire to preserve in the new draft such or such a clause of the old, presenting it in the form of an amendment. In this case the amendment will be taken up for consideration.

When we have finished the second reading of the draft regulations, if the latter has been adopted even with certain reservations, I propose that a combined vote be taken on the whole draft. I do not think it should be exposed to the changes which might be made in it in the plenary session of the Conference if its form should appear too weak. Certainly none of us hides from himself how important it is that in this question, of such general and humanitarian interest, the exclusively military conditions should not outweigh all others. Neither is it necessary that the employment of arms which might be useful for the inexpensive defense of coasts be prevented when it is demonstrated that the interests of peaceful navigation could be safeguarded. If we succeed in harmonizing the different interests which are involved we will accomplish, gentlemen, a work truly useful from a material as well as a political point of view. I urge that we all exert ourselves with zeal in the efforts to be made again to-day, in order that we may achieve success.

The PRESIDENT gives the floor to Mr. GEORGIOS STREIT.

Mr. Georgios Streit (Reporter) states that upon the question concerning the laying of mines, a draft of the report to the Conference has just been distributed. This report can refer to the detailed report submitted to the Commission wherever the draft of the committee of examination has not been modified by the Commission. The said draft is only provisional; it is based upon the deliberations which took place in the two last meetings of the Commission and will be completed or revised after the deliberations of to-day. The Reporter further remarks that the small committee named in the last meeting proposes to replace the last paragraph of Chapter V of the report by the following passage:

The committee has taken note of these declarations and decided that they shall be reproduced in full in the present report. At the same time the committee decided unanimously to suppress all provisions relating to straits, which should be left out of discussion by the present Conference. It was clearly understood that under the stipulations of the Convention to be concluded nothing whatever has been changed as regards the actual status of straits. But, so far as not inconsistent with the foregoing declarations, it has been considered as natural that the technical conditions established by these regulations should be of general application.

[447] The decision of the committee concerning the change in the detailed report presented by the reporter is approved.

The President opens the discussion upon the text revised according to the deliberations of the Commission (fifth and sixth meetings). In this revised text there only figure those clauses which obtained a majority vote; the other clauses have been eliminated. The first paragraph of Article 1¹ is thus worded:

¹ Annex 35.

It is forbidden:

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them;

His Excellency **Turkhan Pasha** makes the following declaration apropos of Article 1 as a whole:

The Ottoman delegation declares that it cannot make any agreement now regarding systems of improvement which are not yet universally known.

The President takes note of this declaration.

Their Excellencies **Mr. Tcharykow**, **Baron Marschall von Bieberstein** and **Turkhan Pasha** declare that they abstain from voting upon this paragraph 1.

His Excellency **Mr. Hammarskjöld** makes reservation of this paragraph.

The President passes to paragraph 2 of Article 1, which is thus worded:

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

This paragraph is adopted without discussion, except for the reservation of his Excellency **TURKHAN PASHA**.

Paragraph 3: "to use torpedoes which do not become harmless when they have missed their mark," is adopted with the reservation of his Excellency the first Ottoman delegate.

The PRESIDENT declares that this article is adopted, with the above-mentioned reservations.

The President then reads Article 2, which is worded as follows:

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

His Excellency **Baron Marschall von Bieberstein** remarks that Article 2 presumes the purpose underlying the laying of mines. That is a subjective element which is not found in the other texts of the draft and which may create difficulties in application. He states that he reserves his vote upon this article.

The President recalls that apropos of this article there is an amendment of the delegation of Colombia,¹ which is worded as follows:

Eliminate Article 2 and paragraph 2 of Article 5, and replace them with the following provisions:

ARTICLE 2

The employment of anchored automatic contact mines is absolutely forbidden except as a means of defense.

[448] Belligerents may not employ such mines except for the protection of their own coasts and only within a distance of the greatest range of cannon.

In the case of arms of the sea or navigable maritime channels leading exclusively to the shores of a single Power, that Power may bar the entrance for its own protection by laying anchored automatic contact mines.

Belligerents are absolutely forbidden to lay anchored automatic contact mines in the open sea or in the waters of the enemy.

¹ Annex 36.

He adds that the delegation of China approves this amendment, as may be seen from the letter which he has just read.

Mr. **Santiago Pérez Triana** takes the floor and explains the object of the amendment in the following terms:

Mr. **PRESIDENT**: It is with the greatest timidity that I address myself to you to-day. Automatic contact mines are in question, and I must admit that my education thereupon is sadly lacking.

Aside from the technical point of view, however, there is another which might be considered as one of international morality, upon which we can all speak with greater ease. In any case, gentlemen, I shall try not to take more than ten minutes of your time, in accord with the established rule, the observance of which has become as precious as the diamond by its rareness.

The primary object of this Conference is peace. Like the polar star, it is far off, but even so it ought to guide us. If we are unable, as is the case, to suppress war by a single effort, as one would a torch by submerging it in water, we can at least prove the sincerity of our intentions by seeking to diminish as far as possible the horrors of war. These are, I believe, points upon which we are in entire agreement.

The great, concrete ideas which constitute the supreme object of our labors, cannot be realized in a day. We know that every harvest denotes a slow evolution of the elements of nature and that if several months in the beneficent earth suffices for the grain to ripen, the heart of man has need of many years, and perhaps of centuries, in order that the idea of redemption may crystallize into an accomplished fact; only, in order that man may not lose faith or fall into despair, the brother of death, it is necessary that effort towards the supreme end be maintained without faltering or discouragement and that something be accomplished, even if very little: a step forward is more eloquent than many promises or wishes. These latter, moreover, are often only the mantle of a conventional charity under which we hide our timid and halting impotence.

Of all the engines of modern war, there is none comparable, in the horror it inspires or the devastation it inflicts, to automatic mines. There is something infernal about these apparatus which, hidden like traitors under the water, spread destruction and death without any risk to those who have laid them, without presenting a common danger to the combatants, which seems to take away from war the aspect of murder, where the assassin stabs his victim suddenly and in the dark. It is pitiable to think of the mass of courage marching on the foe, as sang the English poet, of men thrilling with patriotism and ready to fight, who are crushed, annihilated, and overwhelmed by a murderous agency laid by an absent enemy.

The horror is augmented when the mine floats at the pleasure of wind [449] and wave, a menace not only to belligerents but to all voyagers; it is the hate of men spreading like a scourge upon the waves of the ocean.

Without pretending to know the details of the technical questions, I believe that I am not wrong in saying that there are anchored mines and unanchored mines. If we could suppress their employment absolutely, we would do it, all of us, without hesitating; it is necessary to believe this since we would like to be able to suppress war. But as this is impossible, let us limit the employment of mines to defense, which, if I understand the experts correctly, is equivalent

to saying that we will only permit anchored mines for the defense of ports, coasts, mouths of rivers, etc. The law admits homicide in case of personal defense.

It is incumbent upon the Powers to make this humanitarian concession; it is for them to prove their sincerity. The weak Powers will content themselves without doubt if they can count upon this means of defense, which will only menace the enemy at the time of attack.

But if this concession is refused, the sincerity of the Conference will be doubted; and the world-wide and historical responsibility, shared by all of us—which gives us the right to speak even though we represent neither a Great Power nor a medium-sized Power, and even though we are not technical experts,—will fall most heavily upon the strong and the great. It is to them that we make appeal, demanding that they prove their sincerity. If they cannot come to an agreement to lessen to some degree one of the most horrible possibilities of war, if their courage and generosity fail them, what then is the justification for their power? Force, like nobility, imposes certain obligations. (*Hearty applause.*)

The **President** sets forth the importance of the first paragraph of the amendment proposed by the delegation of Colombia.¹ This paragraph interdicts absolutely the employment of anchored automatic contact mines as a means of attack. In reality, if it is possible to make rules for the employment of mines as a means of defense, it is extremely difficult to do so when these mines are employed as a means of attack. This paragraph contains a question of principle. The **PRESIDENT** therefore asks the delegate of Colombia if he desires that the Commission proceed to a vote upon this question of principle.

Mr. Santiago Pérez Triana is of the opinion that the question of principle is the most important and that it should be put to a vote. The other questions contained in the amendment have a technical character and might be submitted to the examination of experts.

His Excellency **Mr. Hagerup** desires to make certain remarks before the amendment in question is voted upon. Whoever has followed the debates of the committee of examination and Third Commission, cannot but know that the points developed with such eloquence by the delegate of Colombia have already been studied at length. Numerous are the propositions which have been submitted to us, but none—not even the British proposition—has believed it possible to exclude entirely mines as a means of attack, and it would now be Utopian, in view of the existing divergences of opinion, to seek to limit the employment of these mines in the manner proposed by the delegation of Colombia. Even the last attempt made by the Swedish delegation, which by the insertion of a conditional clause sought to conserve Articles 2 to 4 of the original draft, miscarried, in spite of the fact that it was accepted by the British delegation.

The first delegate of Norway thinks that the Colombian amendment could not secure a majority. This amendment has only a demonstrative value and the delegate of Norway abstains from voting for it.

[450] His Excellency **Mr. Mérey von Kapos-Mérey** expresses himself in the following terms:

It seems difficult to vote separately the first paragraph of the amendment

¹ Annex 36.

of the delegation of Colombia. It is true that this paragraph states a principle whose application, however, is very vague. Is it necessary to quote the well-known proverb, that the best means of defense is the attack? Again, it would be very difficult to determine, the case arising, if a military operation is a means of defense, properly so-called, or a means of attack. That is why, in my opinion, it would be necessary to vote the entire amendment in question.

As I have the floor, I declare at the same time that the delegation of Austria-Hungary accepts the entire revised text of the regulations upon the employment of mines. However, without making a preliminary condition, we would desire the elimination of Article 2, which gives to these regulations an interpretative element which is equally vague and difficult of determination.

His Excellency Sir **Ernest Satow** recalls that the British delegation has always supported every proposition tending to limit the employment of mines. In England, the employment of mines has been abolished even for defense. The British delegation has also approved the propositions looking toward the limitation of the places where mines may be laid. For these reasons it will vote favorably upon the Colombian amendment which prescribes the new limitation.

Colonel Ting makes the following declaration:

The delegation of China desires again to state that it will vote favorably upon the amendments of Colombia and Great Britain,¹ because China, more than any other nation, has learned from its own experience the horrors resulting from abandoning automatic contact mines in the sea.

It is with joy, then, that it would view, with the cessation of hostilities, the end of the dangers and inevitable burdens to which the conflict has given rise.

His Excellency Mr. **Beldiman** approves the declaration made by his Excellency Mr. **MÉREY VON KAPOŠ-MÉRE** relative to the Colombian amendment.

His Excellency Baron **Marschall von Bieberstein** declares that the delegation of Germany will vote against the Colombian amendment because, in practice, it is impossible to distinguish between the employment of mines as a means of defense and their employment as a means of attack.

The **President** asks Mr. **TRIANA** if he insists upon a vote upon his proposition.

His Excellency **Santiago Pérez Triana** gives an affirmative answer; but, in view of the remarks just made he prefers the vote to be taken upon the proposition as a whole and not upon the first paragraph alone.

The result of the vote is as follows: 16 yeas, 15 nays, 6 not voting and 7 absent.

Voting for: Bolivia, China, Colombia, Cuba, Ecuador, Spain, Great Britain, Guatemala, Haiti, Netherlands, Peru, Persia, Portugal, Salvador, Uruguay, Venezuela.

Voting against: Germany, United States of America, Argentine Republic, Austria-Hungary, Belgium, United States of Brazil, Bulgaria, Denmark, Greece, United Mexican States, Montenegro, Roumania, Russia, Sweden, Turkey.

Not voting: France, Italy, Japan, Norway, Serbia, Siam.

[451] *Absent:* Chile, Dominican Republic, Luxemburg, Nicaragua, Panama, Paraguay, and Switzerland.

¹ Annex 37.

The **President** states that an absolute majority not having been obtained by the amendment of the delegation of Colombia, which received 17 votes with 37 voting, this amendment is not adopted.

The **President** then reads Article 2 of the draft and recalls the reservations previously made thereto by the delegations of Germany and Austria-Hungary.

ARTICLE 2

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

His Excellency Sir **Ernest Satow** desires to make a remark with respect thereto. His Excellency Baron **MARSCHALL** has declared that the reason why he cannot accept Article 2 is the subjective element introduced into the stipulation which it contains. It is the words: "with the sole object of intercepting commercial shipping" to which objection is made, and it may be thus stated: Who could be judge of the purpose for which the mines are laid if not he who laid them? His Excellency Sir **ERNEST SATOW** recalls that it was exactly with this idea in mind that the British delegation had proposed the following amendment.

It is forbidden to lay automatic contact mines before the ports of the adversary other than those which are considered as war ports.

Without taking this amendment up again his Excellency Sir **ERNEST SATOW** wishes merely to indicate that perhaps a new wording would eliminate the objection made by the delegation of Germany.

The **President** proceeds to a vote on Article 2 of the draft, which is approved by 33 yeas; there are 3 not voting and 7 absent.

Voting for: United States of America, Argentine Republic, Belgium, Bolivia, Brazil, Bulgaria, China, Cuba, Denmark, Ecuador, Spain, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Montenegro, Norway, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Turkey, Uruguay, Venezuela.

Not voting: Austria-Hungary, Colombia, France.

Absent: Chile, Dominican Republic, Luxemburg, Nicaragua, Panama, Paraguay, Switzerland.

The delegation of Germany reserves its vote for the reason previously given by his Excellency Baron **MARSCHALL**. Record is made of this reservation.

The **President** then reads Article 3 of the draft, which is thus worded:

When anchored automatic contact mines are employed, every possible precaution must be taken for the safety of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger [452] zones as soon as military exigencies permit, by a notice addressed to ship-owners, which must also be communicated to the Governments through the diplomatic channel.

His Excellency **Turkhan Pasha** declares that Article 3 being Article 6 of the former draft regulations, the Ottoman delegation reiterates the declaration that it made in the sixth meeting of the Commission, which is inserted in the minutes of the 19th of September.

The **President** then reads Articles 4 and 5, worded as follows:

ARTICLE 4

Any neutral Power which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice must be communicated at once to the Governments through the diplomatic channel.

ARTICLE 5

At the close of the war the contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents along the coasts of the other, their position must be notified by the Power which laid them to the other party, and each Power must proceed with the least possible delay to remove the mines in its own waters.

No opposition having been raised to these two articles, they are adopted without a vote.

The President then reads Article 6.

ARTICLE 6

The contracting Powers which do not at present own perfected mines of the kind contemplated in the present regulations, and which, consequently, could not at present carry out the rules laid down in Articles 1 and 3, undertake to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

He recalls that there is a British amendment¹ to add to this article a second paragraph, worded as follows:

The prohibition against using automatic contact mines which do not answer to the conditions of Article 1 shall come into force for unanchored mines one year and for anchored mines three years after the ratification of the present Convention.

The President makes the remark that this amendment contains two very distinct parts: one providing a period of a year for the coming into force of the interdiction regarding unanchored mines; the other a period of three years with regard to anchored mines.

His Excellency Sir Ernest Satow indicates that this amendment has for its object only to restore paragraph 2 of the original draft, which in the vote at the first reading received 18 favorable votes. It does not seem to him necessary to develop again the reasons in favor of this amendment. He will simply recall that it is justified by the fact that there already exist in many navies safety apparatus, functioning accurately and that consequently the necessary [453] modifications in the automatic mines could be perfectly effected even within a shorter period than that proposed by the British amendment.

His Excellency Mr. Mérey von Kapos-Mére makes the following declaration:

I desire only to say that for the same reasons which the delegation of Austria-Hungary took occasion to state at length in the committee of examination when it was discussing the question of the period to be allowed for the

¹ Annex 37.

transformation of mine *matériel*, we are not in a position to accept the British amendment in regard to anchored mines.

His Excellency *Turkhan Pasha* declares in the name of the Imperial Ottoman delegation:

Article 6 is the Article 9 of the former draft regulations; I reiterate then the same declaration made on this article in the meeting of the Commission and inserted in the minutes of the 19th of September.

Vote, being demanded by the British delegation, is taken.

The result is as follows: 17 yeas, 9 nays, 10 not voting and 8 absent.

Voting for: Argentine Republic, Belgium, Bolivia, United States of Brazil, China, Colombia, Cuba, Denmark, Spain, France, Great Britain, Japan, Norway, Netherlands, Persia, Portugal, Salvador.

Voting against: Germany, United States of America, Austria-Hungary, Bulgaria, Greece, Montenegro, Roumania, Russia, Turkey.

Not voting: Ecuador, Haiti, Italy, United Mexican States, Peru, Serbia, Siam, Sweden, Uruguay, Venezuela.

Absent: Chile, Dominican Republic, Guatemala, Luxemburg, Nicaragua, Panama, Paraguay, Switzerland.

The President then reads Article 7.

ARTICLE 7

The stipulations of the present regulations are concluded for a period of seven years, or until the close of the Third Peace Conference, if that date is earlier.

The contracting Powers undertake to reopen the question of the employment of automatic submarine contact mines six months before the expiration of the period of seven years, in the event of the question not having been already reopened and settled by the Third Peace Conference.

In the absence of a stipulation of a new Convention the present regulations will continue in force unless the present Convention is denounced. The denunciation shall not have effect (with regard to the notifying Power) until six months after the notification.

This article is adopted without remarks.

The President proposes to the Commission that it be good enough to proceed to a vote upon the whole draft in order to give it the sanction necessary for its presentation to the plenary Conference.

[454] The result of the vote is as follows: 38 yeas, 6 absent.

Voting for: Germany, United States of America, Argentine Republic, Austria-Hungary, Belgium, Bolivia, United States of Brazil, Bulgaria, China, Colombia, Cuba, Denmark, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, United Mexican States, Montenegro, Norway, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Uruguay, Venezuela.

Absent: Chile, Dominican Republic, Luxemburg, Nicaragua, Panama, Paraguay.

Reservations were made by the following delegations:

The delegation of Germany upon the points mentioned previously in the minutes.

The delegations of Montenegro, Russia and Sweden upon paragraph 1 of Article 1.

The delegation of Turkey upon Articles 1, 3, and 6

His Excellency Sir **Ernest Satow** desires to extend to the President, at the end of the examination of the draft, his deep gratitude for the very impartial and conciliatory manner in which he has conducted the difficult debates; he desires also to thank the technical delegates who have worked so hard for many weeks to arrive at a result with which the Third Commission has every right to be content. (*Hearty applause.*)

The President then speaks:

I am very deeply touched by the kindly appreciation which his Excellency Sir **ERNEST SATOW** has expressed regarding the part I have had the honor to take in the accomplishment of a task which has not been without difficulties. I desire also to express my gratitude for the cordiality with which the Commission has been good enough to receive the flattering remarks about myself. If now and then it has happened that in the exercise of my presidential functions I have displayed an insistency which might have seemed excessive and if, when our desired object seemed to be receding, I have not always been able to overcome a certain impatience, I am to-day impelled to crave your indulgence. From the beginning the conviction that it was necessary to arrive at a decision has never left us. The rules which we have just established are above all demanded by the humanitarian sentiment common to-day to all nations. We finish, if not with a complete work, at least with satisfactory results. Our Governments were right in expecting them of us.

Gentlemen, thanks to you, thanks to the cooperation of the bureau of the Commission and to our reporter, as energetic as conciliatory and impartial, we have successfully completed a truly useful work from every point of view. Allow me to thank you for it. (*Hearty applause.*)

The **PRESIDENT** asks if the Commission wishes to hear the reading of the supplementary report which will accompany the text of the regulations in its transmission to the plenary Conference.

He states that the Commission seems to rely upon the reporter himself for certain revision which should be made in the report in order that it may be in perfect harmony with the results of to-day's meeting.

The meeting adjourns at 3:30 o'clock.

[455]

Annex

LAYING OF AUTOMATIC SUBMARINE CONTACT MINES

DRAFT REPORT TO THE CONFERENCE¹

MR. PRESIDENT AND GENTLEMEN:

The Third Commission to-day renders an account to the Conference of the mission which you intrusted to it by assinging to it from among the topics men-

¹ This report was presented for the Third Commission by Professor **GEORGIOS STREIT**, reporter of the first subcommission. See the report to the Conference, vol. i, eighth plenary session, p. 280 [287].

tioned in the program of the Imperial Russian Government¹ the question concerning the laying of automatic submarine contact mines.

After having referred the matter for preliminary study to its first subcommittee, which in turn, after a general discussion,² appointed a committee of examination³ with instructions to draft regulations, the Third Commission busied itself for a long time with this subject of the laying of mines in its last four meetings. In the meeting of August 28, it had to dispose of a preliminary question which had arisen in the committee of examination, to wit, whether the regulations to be drawn up should also contain provisions on the laying of mines by neutrals; in the meetings of September 17, 19, and 26, it deliberated on the text of the draft regulations and accompanying detailed report submitted to it by the committee of examination.⁴ We may be permitted to refer to these so far as the project of the committee has not been changed by the Commission.

I

The principal change made by the Commission in the text drafted by the committee consists in the omission of Articles 2 to 5 of the committee text;⁵ these deal with the limits to be observed by the belligerents, as to area, in the use of anchored automatic submarine contact mines. Paragraph 3 of [456] Article 4, which obtained a strong majority (24 yeas, 5 nays, 3 abstentions and 12 absent), was the only one kept by the Commission. It now appears as Article 2 of the draft which we have the honor to submit to the Conference; the rest of the provisions contained in the said articles have disappeared. In fact, from the beginning of our deliberations two opposing tendencies were manifested on the subject of the places where it should be permissible to place anchored automatic contact mines. On one hand it was desired to establish fixed limits within which the employment of such mines would not be forbidden, and on the other a right was claimed in behalf of belligerents to make use of anchored mines without restriction as to place, even on the high seas, within the "sphere of their immediate activity." The committee hoped to be able to find a compromise solution:

1. By permitting the use of anchored automatic contact mines within a zone of three marine miles which in certain places would be extended to ten miles; a further distinction being established on certain points, as to this greater zone, between the defense and the attack.

2. By permitting belligerents to make use of such mines in the sphere of

¹ See vol. i, *in initio*.

² Meetings of June 27, July 4 and July 11 of that subcommission.

³ This committee of examination was *presided over* by his Excellency Mr. HAGERUP (Norway), the president of the subcommission, and was composed of the following members: Rear Admiral SIEGEL and Lieutenant Commander RETZMANN (Germany), Rear Admiral SPERRY (United States), Rear Admiral HAUS (Austria-Hungary), his Excellency Mr. VAN DEN HEUVEL (Belgium), Captain BURLAMAQUI DE MOURA (Brazil), Colonel TING (China), Captain CHACÓN (Spain), Rear Admiral ARAGO (France), Captain OTTLEY and Commander SEGRAVE (Great Britain), Professor GEORGIOS STREIT, *reporter* (Greece), his Excellency Count TORNIELLI and Captain CASTIGLIA (Italy), Rear Admiral HAYAO SHIMAMURA and Captain MORIYAMA (Japan), his Excellency Vice Admiral Jonkheer RÖELL and Lieutenant SURIE (Netherlands), Captain BEHR (Russia), his Excellency Mr. HAMMARSKJOLD and Captain AF KLINT (Sweden), his Excellency TURKHAN PASHA and his Excellency Vice Admiral MEHEMED PASHA (Turkey).

⁴ See the fifth meeting, annexes A and B. The committee of examination held ten meetings; its proceedings were not recorded.

⁵ Annex 31.

their immediate activity even beyond the limits above mentioned; but, in this case, the mines employed "would have to be so constructed as to be rendered harmless within the maximum period of two hours after the party using them abandoned them."

In the Commission this solution received so few votes that it was impossible even to hope that when it came before the Conference the desired agreement would be reached. Even paragraph 2 of Article 4, which established the difference mentioned between attack and defense, was rejected, as it obtained only 10 votes as against 12 nays and 10 abstentions. It was the same with an amendment presented, as a compromise, by the delegation of Sweden, according to which the prohibitions of Articles 2 to 4 would carry an exception in the case "of an imperious military necessity"; this amendment was likewise rejected by a majority of the Commission.

As to Articles 2 to 4, paragraph 1, as presented by the committee, they obtained only a relative and rather feeble majority (Article 2: 16 yeas, 11 nays, 10 abstentions; Article 3: 10 yeas, 10 nays, 10 abstentions; Article 4, paragraph 1: 15 yeas, 9 nays, 12 abstentions); and Article 5 of this text was rejected almost unanimously, being opposed both by the delegations that were against any restriction in area and by the delegations that had consented, in order to facilitate an agreement, to permit the use of anchored mines everywhere in the sphere of the immediate activity of the belligerents, subject to the technical restrictions contained in the second paragraph of Article 5. Moreover, very serious doubts were expressed as to the possibility of applying in all circumstances the technical provisions set forth in that paragraph.

The omission of Articles 2 to 5 of the committee's draft necessarily caused the second paragraph of Article 7 and the second paragraph of Article 9 to be dropped. It seemed, however, to be understood that the absence of any provisions assigning limits within which neutrals can place mines must not be interpreted as establishing a right on the part of neutrals to place mines on the high seas.

By thus overturning, through the suppression of Articles 2 to 5, the decision which had seemed to obtain unanimous support in the committee and according to which a restriction as to area in the use of anchored mines ought to be expressly set forth in the regulations, there has been no intention to swerve from the conviction that a restriction as to area also is in principle imposed upon the employment of such mines. The very weighty responsibility

[457] towards peaceful shipping assumed by the belligerent that lays mines beyond his coastal waters has been several times placed in evidence, and it has been unanimously recognized that only "absolutely urgent military reasons" can justify such a usage with respect to anchored mines. "Conscience, good sense, and the sentiment of duty imposed by the principles of humanity" will be the surest guide for the conduct of mariners of all civilized nations; even without any written stipulation, there will surely not be lacking in the minds of all the knowledge that the principle of the liberty of the seas, with the obligations that it carries for those who make use of this means of communication open to all peoples is definitely dedicated to humanity.

II

The other provisions contained in the committee's draft¹ have not undergone essential modification.

Article 1 remains the same with the exception of a slight change in phrasing to emphasize the prohibition laid down in the first paragraph. The fundamental distinction between the three kinds of engines mentioned in Article 1 is preserved. The Commission was unanimous for prohibiting the use of anchored automatic contact mines which do not become harmless when they have broken loose from their moorings as well as the use of torpedoes which do not become harmless when they have missed their mark. As to unanchored mines, the broader proposal to forbid their use absolutely (for a period of five years) was again brought up by the delegation of Germany; it obtained only a relative majority; and then the interdiction as the committee had worded it obtained a majority of 19 yeas against 8 nays, with 9 abstentions, 8 Powers not responding to the vote call. The Argentine delegation declared that it accepted the provision with the exception of the fixed period of one hour within which the mine must become harmless.

Article 2 [paragraph 3 of the fourth article of the committee's original draft]² secured, as we have just seen, a strong majority; the different vicissitudes through which this provision passed are narrated in the report to the Commission.³

A new and more radical amendment presented by the British delegation,⁴ providing that it is "forbidden to lay automatic contact mines before the ports of the adversary other than those which are considered as war ports" was rejected by the Commission by a vote of 13 to 5, with 17 abstentions.

Article 3 (Article 6 of the committee's draft⁵) was adopted unanimously. The text proposed by the committee underwent only a slight change in its form; since it was unanimously recognized that the provision obliging belligerent States to notify the danger zones "as soon as it can be done" was intended to qualify this obligation as the exigencies of war might make necessary (report to the Commission), it seemed preferable to express this idea more clearly in the very text of the regulations.

His Excellency TURKHAN PASHA repeated on the occasion of the discussion of this article in the Commission, the declaration that had been made in the committee by the Ottoman delegation with regard to the straits of Bosphorus and Dardanelles. This was inserted in the detailed report.

Article 4 (Article 7 of the committee's draft) was accepted unanimously after omitting by a majority vote the provision fixing limits of area which neutrals should observe in laying mines. We have already had occasion to explain the reason of this omission.

[458] Article 5 (Article 8 of the committee's draft) merely completes the provisions contained in the two preceding articles by laying down rules to be observed at the close of the war by every Power, belligerent or neutral, which

¹ Annex 31.

² *Ibid.*

³ See the fifth meeting, annex A.

⁴ Annex 32.

⁵ See the report to the Commission.

has laid mines that may still be dangerous for shipping. This was passed unanimously.

The provision of Article 6 (Article 9 of the committee's draft) is temporary. The engagement taken by the contracting Powers to convert as soon as possible the *matériel* of their mines so as to bring it into conformity with the technical conditions set forth in these regulations was unanimously adopted; but the hesitation manifested in the committee with respect to the period of one year to be granted Governments for effecting such conversion of unanchored mines was emphasized in the Commission in connection with the British amendment to apply this same period to all mines mentioned in the regulations. The British amendment provided:

The prohibition against employing automatic contact mines which do not answer to the conditions of Article 1 shall come into force one year after the ratification of the present Convention.

The vote on this amendment was 18 yeas, 11 nays, with 8 abstentions. Seven Powers did not respond to the call for their votes.

The second paragraph of Article 9 of the text presented by the committee, which relates to the conditions imposed on the use of mines allowed "within the sphere of the immediate activity of the belligerents," had to be abandoned, as we have already said, in consequence of the omission of the rule to which it referred.

Article 7 corresponds to Article 10 of the committee's draft. In the Commission the British delegation proposed an amendment¹ assigning a duration of seven years for the Convention as a compromise between the original proposal, according to which the Convention to be concluded was to have a duration of ten years, and the text presented by the committee, which fixed a term of five years for it; this amendment would at the same time, as was said by the delegation of Japan in the Commission, avoid any interruption between the new Convention to be concluded when the question should be reopened according to paragraph 2 of this article and the Convention now negotiated. The British amendment was adopted by 21 yeas against 8 nays, with 9 abstentions and 6 Powers not responding to the roll call.

It was substituted for the text proposed by the committee.

III

Finally, the Commission on the motion of the Netherland delegation² had yet to consider the form to be given to the decision of the committee, approved in principle by the Commission, according to which there was no change whatever made in the present status of straits by the stipulations of the Convention to be concluded. The Netherland delegation desired that a provision to this effect be inserted in the regulations concerning the laying of mines. After a discussion it was deemed preferable to add nothing to the text of the regulations but instead to change the passage in the report which speaks of the resolution of the committee of examination on this question. It would be thus established in the report that straits are not contemplated in the deliberations of the *present*

Conference, and, while expressly preserving the declarations made in the [459] committee by the delegations of the United States, Japan, Russia, Turkey,

¹ Annex 32.

² Annex 33.

a desire would be indicated to see the technical conditions adopted in the present regulations applied to such mines as might be used in straits.

In line with this idea it was decided to substitute the following for the last paragraph of Chapter V of the report:

The committee has taken note of these declarations and decided that they should be reproduced in full in the present report. At the same time the committee decided unanimously to suppress all provisions relating to straits, which should be left out of discussion by the present Conference. It was clearly understood that under the stipulations of the Convention to be concluded nothing whatever has been changed as regards the actual status of straits. But, so far as not inconsistent with the foregoing declarations, it has been considered as natural that the technical conditions established by these regulations should be of general application.

EIGHTH MEETING

OCTOBER 4, 1907

His Excellency Count Tornielli presiding.

The meeting opens at 3 o'clock.

The minutes of September 26 are approved.

The President makes the following remarks:

To-day, after an absence of two months, there is returned to us the draft Convention concerning the rights and duties of neutral Powers in case of naval war. You know that at the outset the British delegation furnished us with a text in 32 articles which has served as a basis for our work. A large number of provisions contained in these articles have been adopted. Some of them have been withdrawn. In the course of the examination we are about to commence, you will find in the project¹ drawn up by the committee, provisions that do not appear in the proposal of Great Britain.² They have come to us from usages and rules established in other countries. You will also find certain compromise provisions that the spirit of conciliation and the desire to succeed have resulted in, and they seem to me to be worth recommending to you.

Such is the structure of the project. It is not for me to speak of it at greater length to you. I would be trespassing on the ground of our eminent reporter, and that would be audacity on my part.

But in order that the Commission may be fully informed on the subject we are about to deal with, I shall ask Mr. RENAULT kindly to read the first two pages of his report.³ We shall all find it a real pleasure to listen to him.

His Excellency Mr. Keiroku Tsudzuki makes the following declaration:

Mr. President: In the presence of a draft Convention on the rights and duties of neutrals in naval war, and of such a lucid, concise and complete report, the Japanese delegation must say a few words merely to show the reasons of its votes and to express the ideas that have always inspired it, without, however,

having any intention of criticising certain opinions expressed during previous discussions. I permit myself to point out that we have believed that it was a universally recognized and accepted principle of international law, at least in theory, that one of the duties of neutral States is absolute abstention from any aid, direct or indirect, in the operations of the belligerents. The writers of the Occident have maintained this thesis, and they have gone to the extent of saying that even the act of favoring the two parties even in an equal measure would also be a failing in the duties of neutrality, since that act might profit one of those parties more than the other. I have only to mention names of universal reputation, like MARTENS, FIORE, KLEEN, DESPAGNET and MÉRIGNHAC,

¹ Annex 65.

² Annex 44.

³ Annex to this day's minutes.

NYS, HEFFTER, GEFFCKEN, PERELS, etc. Hence, it has seemed to us that neutrality involved duties well beyond the limits imposed by impartial license.

Besides, from the not less universally recognized principle that the belligerents ought to abstain from using neutral ports as bases for their operations of war, it very naturally follows that neutrals have the duty not to permit belligerents to make use of their ports in the sense indicated.

It seems to me that it naturally follows from that, as an absolutely logical consequence that neutral ports ought not to be used for the purpose of preserving the fighting strength of belligerent ships, not to mention the increase of that strength. It seems to me equally clear that coal, being quite indispensable to these ships in acting as fighting units, has a strategic value in modern war, that taking on coal is an act relating to the recuperation of spent strength, that consequently to make use of those ports as coaling stations is only one way of using them as strategic bases, as so many writers have already pointed out.

We deeply regret not being able to support the opinion that neutrals, not having the right to diminish the fighting force of belligerent ships, ought consequently to permit them to take on supplies in their ports. Indeed to take on coal, which is an indispensable act for belligerents in preserving the fighting power for their ships, they have only to cause these vessels to be accompanied by colliers to take on their supplies on the high seas. This is an act of preparation necessary and sufficient for a distant expedition. All that we wish to maintain is that neutral ports are not to be abused either for the purpose of taking the place of such colliers or for the purpose of permitting them to carry out their auxiliary service.

Moreover, we must not lose sight of the fact that these acts of supply take place under the shelter that neutrality offers these vessels by permitting them to remain in its ports without fear of molestation by their adversary, which is equivalent to saying that it is the aid given by neutrality that permits the belligerents to make strategic preparations in security. Here we have one reason more why these vessels should refrain from operations that relate to the periodical recuperation of their physical fighting strength. The same remark would apply, perhaps with greater force, to the use of these ports for the repair of damages and for the refreshment of the fatigued crews of these vessels.

The only exceptions that should be made to the principles above referred to are cases where humanitarian considerations interpose, cases of maritime storms, damages caused by the perils of the sea, etc. The fact that the quantity of coal to be furnished to these vessels is limited by the law of several countries to the amount necessary to reach their own national port, only accentuates [462] the idea of a humanitarian asylum that justifies these exceptions. Likewise, the limitation of the repair of damages to the measure absolutely necessary for seaworthiness, etc., etc.

The question of fact where humanitarian asylum ends and where the abuse of that hospitality to cloak operations or strategic preparations begins is often very delicate and the answer to it is very difficult. This is why we had proposed to the committee of examination some arbitrary but arithmetical criteria, of a nature to exclude complaints in the future. As these proposals could not gain sufficient votes, we accept Articles 12, 15, 17, 19, etc., in their present reading in a spirit of concession and conciliation. But it must be said that these are compromise concessions that the sentiment of conciliation prompts us to accept, and

that there is a great difference between that and accepting proposals that would be the same as recognizing the doctrine that neutrality is only an impartial license, that the right of asylum is only a way of making use of neutral ports as strategic points for lading with coal, for provisioning and making repairs, that is to say, as strategic bases.

This is why we cannot accept the two amendments proposed in the committee of examination, amendments which, according to the report, are to-day submitted to the Commission to be decided upon by the high assembly. One of these amendments is that proposed by his Excellency the honorable delegate of Russia, concerning Article 12. We have always maintained the advantage of having a fixed, arithmetical and unmistakable rule on the length of stay with a view to excluding both abuses and recriminations at the same time. Article 12 in its present wording is calculated to bring out a number of them. Although we would prefer to have a single universal rule, the spirit of conciliation prompts us to accept Article 12 even in its compromise form. At least there is one thing that consoles us, which is that the rules, although not universal, would at least be fixed, unambiguous. The amendment as proposed takes from us even this consolation. It introduces an element of uncertainty. The length of stay would vary according to the facilities that each port offers to belligerent ships in the matter of supplies. Moreover, neutrals would be obliged to have recourse to inquisitorial measures in order to see to it that the belligerent ships did not abuse the right of taking on coal in order to uselessly and illegally prolong their stay. Finally, the amendment contains a stipulation that would tend to recognize in a convention that it is legitimate to allow the ships of a belligerent Power to use the ports of neutrals as strategic bases to fill their coal bunkers, to rest, to recuperate their spent strength, and to make preparation for advancing against the enemy.

These are the reasons which, to our great regret, prevent us from supporting the same amendment. Moreover, the present meaning of Article 12 is one of the essential conditions on which we accept the other articles. For if we accept the stipulations of the other articles, especially Article 19, without having fixed and arithmetical criteria, it is because we believe that the stipulation of Article 12 by its very inelasticity would tend to exercise a restrictive and automatic influence over the abuses that the other articles might be sources of in practice by reason of their elasticity, as has often been demonstrated in the Far East.

The other amendment is the one proposed by his Excellency, the honorable delegate from Sweden.

We regret that we cannot accept it. While we appreciate the spirit of the compromise that has inspired that proposal, and while we render [463] homage to the repeated efforts of conciliation of the honorable author of the said proposal, I permit myself, nevertheless, to repeat that Article 12 is already the result of a compromise. Besides, it must be said that certain signatory Powers have no fixed rules and that there is no assurance that they will make any immediately after the ratification of the projected Convention. So that if we introduce into Article 12 the uncertainty contemplated by the proposed amendment, the belligerent vessels will be able to stay in the ports of the said Powers as long as they have need to take on provisions. This uncertainty is a very serious consequence, and it is of a nature to change completely the essence of Article 12 which, in its present reading, aims at establishing a fixed

rule either by national legislation or by conventional stipulation. Finally, the other remarks that I have made concerning the other amendment would also apply here, and I repeat that it is with great regret that we cannot accept this intermediate proposition.

In a word, we are ready to accept the project in its entirety as it is presented by the committee of examination, provided always that it be accepted by the other maritime Powers. It is well understood that we are not prevented thereby from warmly supporting all amendments that would assist in fortifying our point of view. At the same time I consider it my duty to declare right now that the addition of new stipulations in a sense contrary to that which we have indicated, or the suppression of stipulations of the draft that we have supported as an affirmative expression of cardinal principles whose acceptance by the other Powers would bind us to accept, in exchange, stipulations that do not please us very much, the adoption of those amendments would be, I say, of a nature to force us to decline to adhere to the Convention. For indeed, we would prefer the absence of any stipulation whatever to the making of an international Convention that would tend to give the prestige of legitimacy to the use of the ports of another as indispensable steps in going to meet the enemy. We find that such a Convention would really be a movement backwards and in contradiction to the modern tendency of the theory of international law and also of a nature to put obstacles in the way of the proper crystallization of this theory in the future. In the absence of a Convention we believe that we shall at least have as a guide and a support all the weight of the enlightened opinion of the civilized world and its incontestable prestige.

His Excellency Mr. TCHARYKOW says that it is with sincere satisfaction that the delegation of Russia has heard the conciliatory language of his Excellency the first delegate of Japan. His Excellency Mr. TCHARYKOW is happy also to be able to make an answer of like tenor by announcing that the delegation of Russia has just withdrawn the amendment it had proposed to Article 12 and to which his Excellency Mr. TSUDZUKI had expressed serious and well-grounded objections.

His Excellency Mr. TCHARYKOW announces then to the Commission that the delegation of Russia has filed an amendment to Article 19 respecting the first sentence of the third paragraph of that article. This amendment is narrow in its scope: it has in view a special case, that where a belligerent vessel which has entered a neutral port has not had time within the legal length of stay to effect the loading of the coal that has been granted to it. What ought the neutral Power to do in this case? The Convention says nothing of it. Some are of the opinion that it will not compel the vessel to depart. This will perhaps be true if the neutral State is powerful and if it does not fear the complaints of the other belligerent. But, in the contrary case, the neutral State will be placed in a very delicate situation, for through fear of the reprisals of the other belligerent, it may find itself obliged to make a vessel leave without coal or without a sufficient quantity of fuel and thereby perhaps become a wreck.

It is to remedy these dangers that the delegation of Russia filed its amendment. For the rest, it is in agreement with the delegation of Japan on the point that the neutral port can never serve as a base of operations, and it seems to it that in this regard the Convention contains in its Articles 5 and 9 satisfactory prescriptions and sanctions.

In these circumstances, his Excellency Mr. TCHARYKOW indulges in the

hope that the delegation of Japan can accept the Russian amendment to Article 19.

His Excellency Mr. **Keiroku Tsudzuki** says that he must express to his Excellency Mr. **TCHARYKOW** his very sincere thanks for the manner in which he has treated his declaration and also must render homage to the spirit of conciliation always animating the delegation of Russia as shown on several occasions. As regards the amendment which has just been announced, he can only reserve the expression of his opinion until the time when Article 19 is discussed.

His Excellency Sir **Ernest Satow** then makes the following declaration:

We have stated our opinion on the general question in the meeting of August 1, and again on the meeting of September 11. It is, therefore, not necessary to refer to it to-day.

I desire to renew on the subject of this whole project the reservations that I had to make in the name of the British Government before the committee of examination during the meeting of September 28.

For Great Britain the matter is of such importance, not only by reason of the extent of her coasts, but also because of conventional stipulations binding her, that we must reserve the right to our Government to submit to a careful and detailed examination the whole project as voted by the Conference. It is only under this reservation that we can take part in the separate discussion of each article.

Several of these articles differ seriously from the original proposals put forward by our delegation which are in agreement with the British provisions at present in force. The form of some of these provisions has been greatly modified, so that the text that we have before us to-day is not acceptable in our view. I believe that I should add that in case the project undergoes further serious modifications our Government could probably not accept it, and it would consequently be useless to reserve for it the right of examination to which we have just made reference.

His Excellency Mr. **Hammarskjöld** declares that on account of the situation created by the declarations that have just been read, he is of opinion that his amendment to Article 12 has become useless and that, consequently, he does not take it up.

His Excellency General **Porter** says that the delegation of the United States of America, not yet having received definitive instructions, reserves its vote on the project as a whole until the moment when the Government of the Union shall be able to make a deeper study of it. The delegation of the United States will, therefore, abstain from voting on the different articles.

Mr. **Max Huber** in the name of the delegation of Switzerland makes the following declaration:

The delegation of Switzerland has the honor to declare it will not take part in the voting, article by article, of the draft Convention concerning the rights and duties of neutral Powers in case of naval war.¹

[465] This project regulates matters that cannot directly touch Swiss interests, in view of the geographical position of the Confederation.

It is not the same with the other arrangements concerning naval war, in which Switzerland is deeply and materially interested by reason of her great maritime commerce.

Nevertheless, the delegation of Switzerland will give its cordial support

¹ Annex 65.

to the whole project. Indeed it can only feel real satisfaction in seeing a part of the law of nations that has hitherto given rise to the most diverse interpretations, and which is thus of a nature to arouse international complaints and differences, to-day settled by Convention.

These feelings of approval are the greater because the Convention before us regulates the rights and duties of neutral States in case of naval warfare by analogy with the regulations of the rights and duties of neutral States in case of war on land.

The project submitted to us carries this same liberal spirit, for it not only defines in a precise manner the duties of neutral States, but at the same time it limits their obligations to the legitimate requirements of belligerent interests.

The **President** says that the declarations just made by the delegations of Japan, Russia, Great Britain, the United States and Switzerland will be entered in the minutes. He has noted the general reservation made by some delegations in the sense that their respective Governments intend to examine the Convention as a whole after the close of the Conference. This reservation seems to him very natural. It is proper that a convention of this importance should be studied thoroughly, and it is for this reason that States generally agree to fix a period of time after the close of a conference during which the protocol of signature of the acts simply approved rests open.

His Excellency Sir **Ernest Satow** does not believe that the reservation he made in the name of the British delegation was unnecessary. For this reservation has for its purpose to indicate an intention of not voting in favor of the draft Convention as a whole, and even, in certain cases, of not accepting it.

The **President** expresses the opinion that although it would be interesting to hear the complete report read, the Commission will perhaps prefer to gain time and have the reporter limit himself to giving the necessary explanations from time to time as the articles are discussed. It would, however, be regrettable not to have a reading of the remarkable statement of the question contained in the first pages of the report.

Mr. Louis Renault (reporter) therefore reads the preamble of his report as follows:

Among the topics for the consideration of the Conference the Russian program mentioned "the rights and duties of neutrals at sea," and, hereunder, the "question of contraband; *the rules applicable to belligerent vessels in neutral ports*; destruction, in cases of *force majeure*, of neutral merchant ships captured as prizes." The first and third questions have been assigned to the Fourth Commission; the second was reserved for the Third Commission.

The Commission had before it four different projects:

1. A draft from the delegation of Japan defining the position of belligerent ships in neutral waters;¹
- [466] 2. A draft from the delegation of Spain on the same subject;²
3. A proposal from the British delegation in the form of a draft convention concerning the rights and duties of neutral States in naval war.³
4. A proposal from the delegation of Russia containing draft provisions defining the position of belligerent war-ships in neutral ports.⁴

¹ Annex 46.

² Annex 47.

³ Annex 44.

⁴ Annex 48.

It will be noticed at once that the British proposal has a greater scope than the three other proposals, since, unlike them, it does not confine itself to the status of belligerent war-ships in neutral ports and waters, but also deals with the rights and duties of neutral States in general in naval war.

The Commission has not considered itself bound by the exact terms in which its jurisdiction was defined by the Conference at the time when the several topics were distributed among the Commissions. It has examined the different articles of the British proposition embracing the whole subject of the situation of neutral States in naval war. It is believed that at a time when an International Prize Court is being created, it would be wise to develop to as great a degree as possible a codification of international maritime law in time of war. Thus the work of the Third Commission will be harmonized with that of the Second Commission, which covers the rights and duties neutral States in war on land. This explains the general title given to the project and accepted unhesitatingly by the committee of examination.

In order to facilitate the study of the subject, the second subcommission decided that there should be submitted to it a paper indicating the questions involved in the several proposals. This list of questions facilitated an exchange of views in the meetings of July 27 and 30 and August 1. The matter was then referred to a committee of examination, which made a thorough study of it in a series of thirteen meetings from August 6 to September 28. The draft which we are about to analyze was submitted to two readings; the second taking place in the meetings of September 11, 12, and 28, of which the minutes have been distributed.

The necessity of precise regulations having for their end the removal of the difficulties and even conflicts in this branch of the law of neutrality has been asserted on all sides. Recent experience has added its weight to theoretical considerations in an emphatic and most startling manner.

Land warfare regularly pursues its course on the territory of the belligerents. In exceptional circumstances alone is there any direct contact between the armed forces of a belligerent and the authorities of neutral countries; when such contact does take place, as when troops flee into neutral territory, the situation is relatively simple; customary or written positive law applies in a well-defined manner. The case is otherwise in naval war. The war-vessels of the belligerents cannot always remain in the theater of hostilities; they need to enter harbors, and they do not always find harbors of their own country near by. Their geographical situation exerts a powerful influence upon war, since the ships of the belligerents will not need to resort to neutral ports to the same extent.

Does it not result from this that they have a right to unrestricted asylum there, and may neutrals grant it to them? This is contested. The distinction just indicated is the natural consequence of what takes place in time of [467] peace. Armed forces of one country never enter the territory of another State during peace. So when war breaks out there is no change; and they must continue to respect neutral territory as before. It is different with naval forces, which are in general permitted to frequent the ports of other States in time of peace. Should neutral States when war breaks out brusquely interrupt this practice of times of peace? Can they act at their pleasure, or does neutrality restrain their liberty of action? While it is understood that

when belligerent troops penetrate neutral territory they are to be disarmed because they are doing something which would not be tolerated in time of peace, the situation is different for the belligerent war-ship that arrives in a port which it has customarily been able to enter in time of peace and from which it might freely depart.

What reception then is this ship to meet with? What shall it be allowed to do? The problem for the neutral State is to reconcile its right to give asylum to foreign ships with its duty of abstaining from all participation in hostilities. This reconciliation, which is for the neutral to make in the full exercise of its sovereignty, is not always easy, as is proved by the diversity of rules and of practice. In some countries, the treatment to be accorded belligerent war-ships in neutral ports is set forth in permanent legislation, *e.g.*, the Italian code on the merchant marine; in others rules are promulgated for the case of each particular war by proclamations of neutrality. And not only do the rules promulgated by the several countries differ, but even the rules prescribed by a single country at different times are not identical; moreover, sometimes rules are modified during the course of a war.

The essential point is that everybody should know what to expect, so that there will be no surprise. The neutral States urgently demand such precise rules as will, if observed, shelter them from accusations on the part of either belligerent. They decline obligations that would often be disproportionate to their means and their resources or the discharge of which would require on their part measures that are veritably inquisitorial.

The starting-point of the regulations ought to be the sovereignty of the neutral State, which cannot be affected by the mere fact that a war exists in which it does not intend to participate. Its sovereignty should be respected by the belligerents, who cannot implicate it in the war or molest it with acts of hostility. At the same time neutrals cannot exercise their liberty as in times of peace; they ought not to ignore the existence of war. By no act or omission on their part can they legally take a part in the operations of war; and they must moreover be impartial.

It seems of little use to develop these general considerations, since they give rise to lengthy discussions, inasmuch as neutrality is not viewed in the same light by everybody. It is better to confine ourselves to the study of propositions dealing with particular cases which, while naturally to be regulated in accordance with principles, are presented in concrete and precise shape.

The **President** then reads the preamble as well as Articles 1 and 2 of the project,¹ and these are adopted without debate.

With reference to Article 3, his Excellency Sir **Ernest Satow** makes the following declaration:

As regards Article 3, paragraph 2, I have the honor to announce, on behalf of the British delegation, that in order to show that a spirit of conciliation exists for us, we are ready to vote for the wording proposed by [468] Mr. **LOUIS RENAULT** in the meeting of September 26, although that wording does not correspond with our own ideas on the question.

Article 3 is adopted.

Articles 4, 5, and 6 are likewise adopted without discussion.

¹ Annex 65.

With regard to Article 7,¹ his Excellency Mr. Ruy Barbosa pronounces the following address:

Mr. PRESIDENT: In the part of the report concerning the article that has just been read it deals with the Brazilian amendment² permitting the delivery of war vessels ordered from the shipyards of a neutral country more than six months before the outbreak of the war. In transcribing its text our eminent reporter has not failed to speak of the opposition to it on the part of one of our most illustrious colleagues, adding that this proposal did not result in a vote, and that our naval delegate had reserved the privilege of answering the objections of our adversary in a later meeting.

Although we do not press the question of our amendment, which was on our part rather a satisfaction given to a just idea than the expression of an interest, the severity of the language used by our opponents does not suffer us to preserve silence. This is why I take advantage of the first opportunity to reply.

In the opinion of his Excellency Mr. DRAGO, expressed in the most categorical manner, "the Brazilian amendment upsets all accepted notions on this subject." It would be "a long step backwards from the principles and usages which seemed fixed forever." Since the laws of the United States of 1794 and 1819 up to the Treaty of Washington of 1871 with its three rules, followed by the formulas of the *Institut de Droit International* in 1875 it has been "fully recognized *without there having been the slightest objection*" that the act justified in the Brazilian amendment "would constitute a typical case of violation of neutral duty."

Now what is certain is that the facts are far from authorizing the peremptory character of these assertions, and that the Brazilian amendment could not effect any upsetting in a matter where the rules proposed, although obtaining a majority of votes, have always met and still meet with serious opposition, and it is for this reason that we are asking for their revision on this very important subject.

This is what I propose to explain to you.

In spite of the American law of 1794, "the great judges who adorned the Supreme Court of the United States during the first quarter of the nineteenth century laid down again and again that the intent of the parties concerned in the fitting out, arming and equipping" of the war-ship "should be the determining element in the decision," according to the rule laid down by these magistrates, "the *animus vendendi* being innocent, the *animus belligerandi* guilty." These are the very words of LAWRENCE.³ Now it would not be reasonable to see an *animus belligerandi* in the purely mercantile act of the naval ship-builder, who in making delivery of an order received long before the declaration of hostilities does nothing but fulfill the contract engagement concluded at a time when the war was not foreseen.

Again in 1822, that is to say, three years after the last American law invoked by our learned adversary, the great Judge Story, in delivering [469] the decision of the Supreme Court of the United States in the case of the ship *Santissima Trinidad*, spoke as follows: "There is nothing in

¹ Annex 65.

² Annex 52.

³ *The Principles of International Law*, 3d ed., 1906, § 262, p. 547.

our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure, which no nation is bound to prohibit; and which only exposes the persons engaged in it to the penalty of confiscation."¹

DANA, the celebrated commentator on WHEATON, summed up the American doctrine in these terms in 1866: "As to the preparing of vessels within our jurisdiction for subsequent hostile operations, the test we have applied has not been the extent and character of the preparations, *but the intent with which the particular acts are done*. Is the intent one to prepare an article of contraband merchandise, to be sent to the market of a belligerent, subject to the chances of capture and of the market? Or, on the other hand, is it to fit out a vessel which shall leave our port to cruise, immediately or ultimately, against the commerce of a friendly nation? The latter we are bound to prevent. *The former the belligerent must prevent.*"²

After DANA, the commentators on WHEATON, namely, BOYD in 1875 and ATLAY in 1904, used the same language: "The simple fact of an armed vessel having been equipped in, and sent from the United States to a belligerent did not, of itself, necessarily constitute a breach of the act, or of the law of nations. Thus, if a ship of war was built and fitted out in America, and was then *bona fide* sold, purely as a commercial speculation to a belligerent, there would be no intent that she should cruise against friendly commerce, and thus no breach of neutrality would be committed. Ships of war and arms are articles of commerce, and neutrals are entitled to continue their ordinary commerce with belligerents, subject to the risk of their goods being captured if they are contraband. No State prohibits its subjects from trading in contraband."³

We easily see the arbitrary character of this jurisprudence and the injustice of its corollaries which have strikingly illogical consequences. According to it a war-ship held completely equipped and armed in a neutral port could pass into the hands of a belligerent provided care is taken to effect the sale, even though it be done immediately, only outside the jurisdiction of the State whose subjects engage in this speculation. That would be only an entirely legitimate commercial act. But neutrality would be violated if the ship-builder whose act was only done in execution of a contract prior to the war, and even by its date wholly unconnected with any intention of complicity in the warfare, had delivered the vessel to the purchaser in the same port where it was built.

The contradiction is palpable. We would see a violation of neutrality precisely in the case where the delivery of a war-ship is incontestably an act of good faith, the execution of a contract devoid of any intention hostile to a belligerent. We would consider as being no contravention of neutrality the case where the hostile complicity should only hide itself under a manœuvre that could be utilized by all speculators.

Next in the chronological order of the authorities quoted against us we come to the Treaty of Washington and the *Institut de Droit International*. According to our eminent friend, unfortunately our adversary in this question, the rules of that international act of 1871 and that learned body in [470] 1875 have not met with objections of any kind, reaching a status to-day of a definitive part of the law of nations.

¹ WHEATON'S *U. S. Supreme Court Reports*, vol. vii, p. 340; LAWRENCE, *The Principles of International Law*, 3d ed., 1906, §262, p. 547.

² Note 215 to WHEATON'S *International Law*, pp. 562, 563.

³ WHEATON'S *International Law*, Atlay's ed. of 1904, pp. 598-599.

Is this true, gentlemen? Not at all.

To be sure the first rule of the Treaty of Washington of 1871 and the second conclusion of those adopted by the *Institut* in 1875 say that a neutral State should not permit individuals to deliver vessels to a belligerent State in its ports or in its waters.

But did not the rules of this Treaty and the conclusions of the *Institut* meet with objections? Did they become obligatory principles consented to by all nations?

As regards the rules of Washington, let us see what even the English authorities say of them.

The commentators on WHEATON, even in 1904, wrote as follows concerning them:

These rules are the weak point in the whole matter. What does this amount to? Simply that England agreed that her liabilities should be judged of by rules which she admits were not in force at the time the acts she is charged with were done. It is useless to rake up a past quarrel, but it is much to be regretted that the noble spectacle of two great nations referring their disputes to a peaceful tribunal, should be marred by the tribunal being bound to act in a manner contrary to all the known principles of justice. To consent to be judged by *ex post facto* rules is a sacrifice which few care to make, and which, when made, is not likely to call forth imitation.¹

And further these writers on international law say:

The question arises, has there been any change effected in the general principles of international law respecting the duties of neutrals? England and America, by agreeing to act in future on the three rules of the Treaty of Washington, have added to their duties as neutrals. But owing to a difference of opinion between these two countries as to the interpretation of these rules, foreign States have not been invited to accede to them. Therefore, as regards other States, the general principles of international law remain the same.²

And what are the principles of international law on this point? See how the latest annotator of WHEATON defines them:

Now ships intended for war, whether armed or not, are clearly contraband, and the difficulty of distinguishing between the *bona fide* sale of a ship of war, and the organizing of a hostile expedition in her territory, has induced England to prohibit altogether the sale of such ships by her subjects to belligerents.³

Now it is manifest that such a difficulty does not exist, I mean that the good faith of the vendor cannot be doubted when we are dealing with the execution of an order much earlier than the outbreak of hostilities.

Another English writer on international law, who has very carefully studied this obscure corner of the science, is LAWRENCE, the third edition of whose *Principles* came out last year. This is what he says on this point:

¹ WHEATON, Atlay ed., pp. 605-606.

² *Ibid.*, p. 611.

³ *Ibid.*, p. 612.

The question is still far from settlement. The old principles have been thoroughly discredited and the maritime Powers have come to no agreement upon new ones. The three rules of the Treaty of Washington of 1871, and the award given by the Geneva tribunal in the following year, ought to have cleared up the difficulty, but unfortunately they did nothing of the kind. The limits of neutral liability for the escape of belligerent vessels are not more clearly defined than they were before; and on this and other points the decision of the arbitrators, though it settled the case before them, has not met with general acceptance as containing desirable regulations for the future conduct of belligerents and neutrals in their mutual relations.¹

After having dwelt on this subject at some length, LAWRENCE concludes with these words:

The grave disagreements we have sketched, and others of minor importance to which we have not alluded, did not improve the chance of a general acceptance of the three rules of the Treaty of Washington. The two Powers most immediately concerned have never been able to settle the terms of a joint note inviting others to accede to them, and since 1876 have given up the attempt to do so. The Governments of Germany and Austria let it be known beforehand that their consent would be withheld; and no State has shown itself eager to adopt the new *formulae*.²

LAWRENCE recalls the discussion of these rules by the *Institut* in 1874 and 1875, but only to insist upon the discredit into which they have fallen. "So flat have they fallen that it has been doubted whether they bind the two Powers which originally contracted to observe them. Instead of settling disputed points they have raised new difficulties."³

HALL writes in the same fashion, remarking that effect could not be given to the provisions of the Treaty of Washington in a future war in which one of the two countries, Great Britain and the United States, would be belligerent and the other neutral.

The French authors use similar language. It will be sufficient to quote from the work of CHARLES DUPUIS entitled *Droit de la guerre maritime*, in which we read:

The authority of the Treaty of Washington has been greatly compromised by the discussions to which it has given rise even between the contracting parties. There is no agreement either on the sense of the rules formulated or upon the interpretation given them by the judgment rendered by the arbitrators at Geneva, September 14, 1872.⁴

Have the conclusions of the *Institut de droit international* in 1874 and 1875 been more fortunate? Have they met with no objections? Have they succeeded in establishing the law as it is?

Not at all. We find in the *Revue de droit international*⁵ that "none of them were adopted unanimously." We see there that LORIMER "stated cer-

¹ LAWRENCE, *Principles of International Law*, 3d ed., pp. 549-550.

² *Ibid.*, p. 553.

³ *Ibid.*, p. 554.

⁴ CHARLES DUPUIS, *Le droit de la guerre maritime d'après les doctrines anglaises contemporaines*, Paris 1899, No. 327, p. 452.

⁵ Vol. vii. p. 282.

tain radical objections." We see also that WILLIAM BEACH LAWRENCE "declared himself as decidedly opposed to the three rules of Washington."¹

If we consult the *Annuaire de l'Institut* in the volume containing the minutes of the session of the meeting of August, 1875, we shall find there that WESTLAKE and PIERANTONI spoke in the sense of our proposal. The second conclusion adopted established in its second part that "a neutral State is bound to exercise vigilance to prevent other persons from placing war vessels at the disposal of any of the belligerent States in its ports or in those portions of the sea subject to its jurisdiction."

Very well! the text of the *Annuaire* says that "PIERANTONI opposes the second part of the paragraph, as he sees in it an excessive limitation of the right of neutrals. He asks for its suppression. It suffices, says he, that war vessels like cannon and guns and any other contraband be exposed to seizure."

[472] There is therefore nothing, either in the rules of Washington or in the articles of the *Institut* that is not debated and disputed. The conclusions of the *Institut* especially have been criticized exactly in the clause where they might be an obstacle to the Brazilian proposal.

In the midst of these divergences and doubts, what is there that is solid in this subject in the present state of theory and of practice?

The text of HALL gives us the following idea: "A vessel completely armed . . . is a proper subject of commerce. The Americans recognized this in admitting the right to deliver it to a belligerent.² If the neutral may sell his vessel when built, he may build it to order. . . . It would appear therefore . . . that a vessel of war may be built, armed, and furnished with a minimum navigating crew, and that in this state, provided it has not received a commission, it may clear from a neutral harbor on a confessed voyage to a belligerent port without any infraction of neutrality having been committed." Practice having shown, however, how easy it is for a vessel apparently unable to engage in immediate hostilities to start on a cruise almost at once after leaving neutral waters, the principles have appeared insufficient, and it may be said "that an international usage prohibiting the construction and outfit of vessels of war, in the strict sense of the term, is in course of growth, *but that* although it is adopted by the most important maritime Powers, *it is not yet old enough or quite wide enough to have become compulsory on those nations which have not yet signified their voluntary adherence to it.*"³

Even if we should establish definitively the precept that obliges a neutral State not to permit, in time of war, cruisers constructed in its territory to leave its waters, would not an order made prior to the war and already well advanced in its execution constitute a special case in which the absence of hostile intention is evident and the good faith of the ship-builder is manifest, and in which, as between the interests of the two belligerents, he who has in his favor the faith of a contract concluded in time of peace ought to have preference, as the opposing claim results from a happening of later date than the acquired right?

This is the more just as the present tendency, attested by a majority of votes in this Conference, is in favor of the abolition of contraband of war, and

¹ *Revue de droit international*, vol. vii, p. 130.

² This sentence is a paraphrase of HALL, rather than a quotation.

³ HALL, *International Law*, 5th ed., 1904, pp. 611, 615; DUPUIS, pp. 455-456.

as it is an idea recognized by the practice of nations even in the last naval war and sanctioned by declarations of Governments of the highest authority, such as those made by Chancellor VON BÜLOW in Germany and the Prime Minister of England, Mr. JAMES BALFOUR in 1904 that "there can be no doubt that merchant ships may be sold by neutrals to any Government, and that that Government may turn these ships into cruisers if they please."¹

By abolishing contraband all obstacles to commerce between neutrals and belligerents in arms and munitions would be removed. Through the right to sell to belligerents any kind of merchant vessel neutrals would be given the widest latitude in increasing, during the war, their navy, not only their transports but also their cruisers. For, according to the solution proposed by HALL and adopted by LAWRENCE, and the principle openly maintained during the war between Russia and Japan, such commerce would not be limited even when the dealings are in those large transatlantic liners which by their build are made a part of the auxiliary fleet of their Governments, and which [473] with the immediate addition of some cannon, without any other special adaptation, become war-ships dangerous for the merchant marine of the other belligerent.²

This practice has received still further extensions, for in July, 1904, the Russian Government received a submarine, the *Fulton*, built in the United States, whence it was exported during the war, and Acting Secretary of State LOOMIS declared that the Washington Government could not take any action in the premises, since, according to the American administrative ruling, a boat of the size of the *Fulton*, carried on board a larger vessel, is merely an article confiscable as contraband of war.

It would follow that the law of nations, even between those that concluded the Treaty of Washington would expressly permit the sale of vessels convertible immediately into war-ships, as well as of the most formidable vessels as instruments of destruction at sea, and that too when the hostile intention and the complicity with the belligerent are most manifest. Why, then, limit the prohibition, as a single exception, to the cases mentioned in our amendment where the priority of the order and of the beginning of its execution would put quite out of doubt the exclusively commercial and strictly legal character of the act of the ship-builder that delivers such a vessel?

Our proposition would be of advantage, if admitted, to all countries not in a position to build their own navy. The Argentine Republic and all Latin America are concerned as well as Brazil. We were long a country with naval shipyards. In the days of wooden vessels our war-ships, both cruisers and frigates, were almost all built in our own shipyards. From the time of the seventeenth century we furnished large vessels to the Portuguese army. During the war with Paraguay we quickly built several armored monitors, among them those that forced the passage of Humaitá in a memorable naval battle. We might indeed return to this school for which our traditions incline us as well as the bent of our temperament under the influence of our geographical situation.

On the other hand, our proposal would be as advantageous to the great

¹ DUPUIS, p. 457; SMITH and SIBLEY: *International Law as interpreted during the Russo-Japanese War*, pp. 109-110; HERSHEY: *The International Law and Diplomacy of the Russo-Japanese War*, pp. 91-97.

² HALL, p. 616; LAWRENCE, § 262, p. 548; DUPUIS, pp. 457-8.

ship-building countries of Europe; for, if we leave the existing rule in effect all countries needing naval defense will be bound to make preparations to build their own boats, and get along without placing orders with the shipyards of this continent.

At the same time we may note with regard to this article of war the same thing as regards other weapons. The prohibition of their commerce, embarrassed by the rules on contraband, tends to force nations to pile up their military supplies. This is what I stated when arguing with authorities of the highest rank for the abolition of contraband of war.

The same remark would apply, in no less degree, to the prohibition of trade in naval vessels during war. It would more and more force maritime States to increase their naval units beyond what would prove necessary for their defense, if foreign shipyards were not closed to them on the outbreak of the war.

It would therefore not be, as my illustrious adversary supposes, "a gloomy privilege for this Conference" to adopt the Brazilian amendment. In spite of an appearance to the contrary it would be rather a step towards peace to permit maritime States to lighten the burden of their naval expenditures in the expectation that when circumstances should make it necessary for their defense, their needs could be supplied by the industry of foreign builders.

[474] This is our answer to the opposition with which our amendment has been honored. As I was not here when it was stated, it is only now that I have been able to discharge this duty.

The **President** states that the interesting communication of his Excellency the first delegate of Brazil is relative to Article 8, and its only purpose is to explain the amendment proposed by the Brazilian delegation in a preceding meeting. No amendment, nor any motion having been filed, he thinks that the insertion of this explanation in the minutes will satisfy his Excellency Mr. BARBOSA.

Articles 7, 8, 9, and 10¹ are then read and adopted without discussion.

With regard to Article 11, Mr. **Kriege** declares that the delegation of Germany reserves its vote on this article while awaiting instructions from its Government.

Article 11 is then adopted and the **President** reads Article 12.

ARTICLE 12

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

Rear Admiral **Siegel** explains to the Commission the signification of the German amendment which is worded as follows:

ARTICLE 12

Belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State, situated in the immediate proximity of the theater of war, for more than twenty-four hours, except in the cases covered by the present Convention.

¹ Annex 65.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or in its territorial waters situated in the immediate proximity of the theater of war, it must notify the said ship that it is to depart within twenty-four hours.

ARTICLE 13bis

In the absence of special provisions to the contrary in the law of the neutral State, the stay of belligerent war-ships in the ports and roadsteads outside of the theater of war is not limited. Nevertheless, the belligerent is bound to conform to the ordinary conditions of neutrality and to the requirements that the neutral State deems necessary. Moreover, it is bound to depart if the neutral State so orders.

He expresses himself as follows:

I ask permission to add a few words to the amendment which the delegation of Germany has had the honor to present to you and which relates to Articles 12 and 13 of the draft Convention concerning the rights and duties of neutral Powers in naval war.

It seems to me well to reiterate that this amendment is a compromise proposition between the proposition of the delegation of Great Britain [475] and the view-point of the Powers which prefer the custom observed by France up to the present time. We have sought an intermediate solution between these two divergent theories. You have before you our statement and the text of the articles which we submit to your decision. You have found there all the arguments in favor of our amendment. It will suffice then for me to reply to certain remarks which have been made against our proposition.

First, it has been said that it will be impossible to make a distinction between those regions which form the theater of war and those which do not, the theater of war being everywhere in all the oceans. But whoever has read the underlying reasons for our proposition or has heard the declarations which I have made in regard to this matter, cannot doubt that we have used the expression "theater of war" in a special sense, supposing always the presence of *two* opposing belligerents; the presence of a single adversary does not constitute the theater of war. If one maritime Power possesses simultaneously naval forces in different parts of the world, the theater of war exists only in the regions where maritime forces of the adversary are found at the same time.

Then, it has been said that the adversaries will move so rapidly that there will be a perpetual change of the theater of war and that it will be impossible for neutrals to decide what should or should not be considered the theater of war. But the neutral has a perfect liberty to declare as the theater of war whatever appears to him as such, and he takes no risk in giving to this declaration an extensive meaning. Only he makes it in virtue of his own sovereignty, and not because forced to do so by an international convention. However, I pray you to be good enough to exert your memories in order to convince yourselves that in late wars such movement of the *two* adversaries has not taken place. But even in case such a movement should occur, it will doubtless, in the very nature of things, occur slowly and will not cause any difficulties to the neutrals who find themselves obliged to fix the area of the theater of war.

In accepting the principle of our proposition, which limits the stay to

twenty-four hours in the theater of war and which leaves to the neutral State the liberty of fixing the duration of stay outside of this area, the neutral Powers, especially those who possess a very extended coast-line, will find themselves freed of a great embarrassment and will at the same time guard intact all the rights of their sovereignty.

If it is true that a certain number of States have accepted the twenty-four hour rule, nothing will prevent their applying it in the future, but the great majority of the Powers should now decide whether they are ready to bind themselves by an international convention or whether they prefer to act according to circumstances and apply their national laws.

At present there are two opposing principles. Those who think that one is too narrow and the other too broad will find in our intermediary and compromise proposition both the liberty which should be left to the State and the restrictions which prudence recommends in time of war.

On this question of principle the decision of the Commission will remain in force even in case the Convention under discussion should be subjected to modifications.

I pray then, Mr. PRESIDENT, that you will be good enough to proceed to a vote upon our proposition.

His Excellency Sir **Ernest Satow** makes the following declaration regarding the German amendment:

We cannot accept the proposition according to which the provisions of

Article 12 would only be applicable to the States situated in immediate [476] proximity to the theater of war. We explained at length the reasons for our refusal before the committee of examination, on August 28, and a second time on September 11.

Indeed, the amendment, if it should be adopted, would not fail to create difficulties for the neutral, who, in the absence of precise data, which it will always be impossible for him to procure, will never know where the belligerents have the intention of battling. Nor would it fail to introduce into the situation an element of uncertainty, since neutral and neighboring States may each have a different idea upon the exact extent of the theater of war.

Those in favor of the proposed amendment claim that the application of the regulation pure and simple will impose a terrible burden upon the neutral because of the difficulty which he will experience in exercising an effective control over the full extent of his coast-line. This is, in our opinion, an objection without foundation, since the regulation is made precisely with the idea of protecting the neutral and to prevent the belligerent from addressing remonstrances to him for having extended hospitality to the vessels of the adversary.

The neutral is only obliged to employ the means at its disposal to assure the strict application of Article 12, and we are of the opinion that, thanks to this article, he will find himself placed in a more favorable position than if he were confined to the obligation of endeavoring to discover the probability of a naval conflict in the neighborhood of his coasts every time a belligerent warship arrived in one of his ports.

His Excellency Mr. **Keiroke Tsudzuki** speaks as follows:

Without having any intention of criticizing the opinion opposing our own, I simply wish to say a few words in explanation of our vote. Regarding the proposition to make a distinction between the regions which are in proximity

to the theater of war and those which are not, although recognizing the scholarly ideas upon which this proposition is based, we regret sincerely not to be able to support it, in spite of the very ardent spirit of conciliation we have just voiced.

In case of a war between Western Powers, while we would be a very great distance from the theater of war, we would be obliged to observe the duties of neutrality upon land, although the accomplishment of these duties would have but little effect upon the progress of the war in the West. We do not see how our duties as a neutral upon sea would differ from our duties of neutrality upon land. But in the purely naval question we do not understand how a distinction can be made between neutral duties such as abstention from the sale of war-ships and submission to the right of visit and to other rights of one or other of the belligerents, and the duty not to permit belligerent vessels an unlimited stay in neutral ports. Still more, there are very great difficulties concerning the practical application of this doctrine. Where will the geographical proximity of the theater of war commence? For example, in the late war in the Far East, should this proximity be calculated from Kamranh or Singapore, from Penang or perhaps Saigon? If it is for the neutrals to decide this question, it is possible for one of the neutral States to decide it in a manner diametrically opposed to the way in which it is decided by another, so that there may be made two entirely different rulings in ports very near one another. On the other hand, it is necessary to consider that many Powers have possessions in the Far East, so that in all western wars, we will be forced to consider ourselves as being in proximity to the theater of war. And again there are belligerents who could at will transform distant waters into a theater of war. [477] At the time of the Crimean War the allies sent two war-ships to bombard Petropavlovsk. The sending of these two vessels was sufficient to transform seas, pacific until then, into seas situated in proximity to the theater of war. Following the same line of thought, we would arrive at the conclusion that the belligerent had only to send certain fast cruisers ahead of an enemy fleet in order to create the possibility or the potentiality of a bellicose collision, and in thus doing to force neutrals to apply the most rigorous rule in their territorial waters.

The natural consequence of this state of affairs would be that the neutral country would have to change from time to time the rule which it applies in its territorial waters, so that neither belligerents nor neutrals would ever know exactly to what rule to conform, and neutrals would often be exposed to recommitments on the part of one or both belligerents.

We are then of the opinion that it is precisely to avoid uncertainty that we would like to see a convention upon this matter established, and it is for that reason that we cannot approve this proposition.

The President observes that the discussions to which Article 12 of the draft Convention has given rise have sufficiently enlightened the Commission, and that a few words will suffice for him to state the question. For Article 12, said he, there are two propositions. The German proposition is an amendment to that of the committee of examination. It will therefore be put first to a vote. Between the two propositions there exists this difference, that in the German amendment the twenty-four hour rule for the duration of stay is rigid and absolute but applies only in the waters situated in the immediate proximity of

the theater of war. In the article proposed by the committee, on the contrary, the limitation of stay to twenty-four hours is the general rule, in default of other special provisions which the neutral State is free to adopt; but this prescription applies everywhere.

The PRESIDENT then puts to a vote Article 12 as proposed by the German delegation, it being well understood that it is above all the principle of the application limited to the waters situated in immediate proximity to the theater of war which is brought under deliberation.

The result of the vote is as follows: 10 yeas, 11 nays and 20 not voting.

Voting for: Germany, Argentine Republic, Austria-Hungary, Bolivia, Bulgaria, Guatemala, Montenegro, Roumania, Russia, and Serbia.

Voting against: Belgium, China, Denmark, Spain, Great Britain, Greece, Japan, Mexico, Netherlands, Persia, and Portugal.

Not voting: United States of America, Brazil, Chile, Colombia, Cuba, Dominican Republic, Ecuador, France, Haiti, Italy, Luxemburg, Norway, Panama, Peru, Salvador, Siam, Sweden, Turkey, Uruguay, and Venezuela.

A vote is then taken upon Article 12 of the draft. There are 30 yeas, none voting against, 10 not voting and one reservation.

Voting for: Belgium, Bolivia, Chile, China, Denmark, Spain, France, Great

Britain, Greece, Haiti, Italy, Japan, Mexico, Montenegro, Norway, [478] Panama, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Turkey, Uruguay, and Venezuela.

Not voting: United States of America, Argentine Republic, Austria-Hungary, Brazil, Bulgaria, Colombia, Cuba, Dominican Republic, Ecuador, and Guatemala.

Germany reserves its vote.

Two States are absent: Luxemburg and Nicaragua.

The President asks Rear Admiral SIEGEL if Articles 13 and 13bis of the German proposition¹ should be put to a vote. Upon the negative reply given him, he reads Article 13 of the draft of the committee, which is adopted without discussion.

Upon Article 14² Captain Burlamaqui de Moura makes the following declaration:

In referring to Mr. RENAULT's observation regarding the passage in the commentary on Article 14 of this draft Convention, developed in such a brilliant manner by his Excellency, I propose to make a few remarks of a nature to explain more clearly the view-point from which the delegation of Brazil has considered this very important question of the duration of stay of belligerent vessels in neutral ports and territorial waters, a view-point to which the eminent reporter has done us the honor to refer. In the meeting of July 27, we had occasion to explain our ideas in regard to the *questionnaire* relating exclusively to the rule respecting such vessels in such ports and in such territorial waters, and it seemed to us well to recall on this subject the opinion of the distinguished Professor VERRAES upon the fate of belligerent war-ships which were already in a neutral port for the protection of their nationals, without thereby having any intention of transforming this explanation into a proposition to be submitted to

¹ Annex 64.

² Annex 65.

the approval of the Conference; of course we were well aware of the fact that numerous difficulties would prevent the proper execution of our work, if by chance we had had the intention of choosing this way of doing. Indeed, it was difficult for us to formulate it without having to deal immediately with the rare cases in which the suggested protection might be exercised without the special permission or tacit consent of neutrals who lack the means to exercise it for themselves.

Happily for international tranquillity, it is already recognized to-day that almost all States are in a position to fulfill this obligation without its being necessary for interested States to interfere in any way; therefore the question which we have raised is only meant to impress in all its sincerity, upon the spirit of legislators, the usefulness in the future of this difficult regulation for such limited cases.

Articles 15 to 18¹ are adopted without discussion.

ARTICLE 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

[479] Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

The revictualing and shipping of fuel do not give the right to prolong the lawful length of stay. However, if, in accordance with the law of the neutral State, the ships are not supplied with coal within twenty-four hours of their arrival, this period is extended by twenty-four hours.

Upon Article 19 his Excellency Mr. Keiroku Tsudzuki expresses himself in the following terms apropos of the omission of the first phrase of paragraph 3:

Appreciating the spirit of conciliation in which the proposition is made, we regret all the more keenly not being able to support the suggested omission.

We believe that it is precisely this paragraph 3 of Article 19 which enables us to remove an apparent contradiction between Article 12 on one side and the second paragraph of Article 19 on the other. The omission of paragraph 3 would result: (1) in an uncertainty as to whether Article 19 is one of the cases of exceptions contemplated by the last phrase of Article 12, or whether Article 12 is to be applied in spite of the stipulations of Article 19; but it is precisely the third paragraph of Article 19 which gives an authentic interpretation by removing this uncertainty; (2) if it is the intention that the first of the above interpretations should prevail, then the omission of this paragraph would change completely the essential character of Article 19. By the wording of this article we find ourselves confronted by two opinions; one holds that coal should be given to these vessels only for the sake of humanity and the other maintains that these vessels have the right to provide themselves in neutral ports with as much coal as they need; Article 19 is a compromise combination which nevertheless purposelessly leaves the question of principle unsettled. Consequently, the omission of the third paragraph would have the tendency of recognizing the right of these vessels to prolong their stay to provision themselves with coal; in other words, its omission would tend toward the recognition of the legitimacy

¹ Annex 65

of the idea against which we have always contended, that these vessels have the right to use the ports of others as strategic bases for shipping fuel; (3) the omission of the third paragraph of Article 19 would introduce into Article 12 an element of uncertainty which would be of a nature to change completely the purport of the said article. Article 12 is, as I have just said, the result of a compromise. Although we should prefer a single and uniform regulation for all the world, the spirit of conciliation bids us accept Article 12 even in its present compromise wording, because we would at least have this consolation, that although not unique or universal, the regulations would at least be fixed. The omission of the third paragraph of Article 19 takes away even this consolation. The consequences of this omission would be very grave. The length of stay would vary according to the facilities which the neutral ports offered for the purposes of shipping coal. Moreover, the neutral States would be obliged to resort to measures of inspection to discover if these vessels were not abusing the privileges of provisioning in order to prolong their stay unnecessarily and unlawfully.

Such are the reasons why we cannot approve this amendment. We accepted Article 19 in its present wording because its third paragraph would give the stability necessary for the execution of Article 12. The omission of this paragraph then would endanger all the benefits of Article 12.

His Excellency Mr. Tcharykow begs leave to explain the motives underlying the amendment proposed by the delegation of Russia to Article 19. As he indicated at the beginning of the meeting, this amendment contemplates [480] a very rare case, but one which it is no less necessary not to leave unsettled. This would be a serious omission indeed in the Convention.

The case is the following: A belligerent vessel has commenced to take on coal in a neutral port and, while so doing, the lawful length of stay expires. Do not common sense, equity, one might perhaps even say good faith, demand that the neutral State permit the vessel in question to remain until after it has entirely finished shipping the quantity of coal allotted him?

It is evident that in the absence of any stipulation, this solution would be possible only to sufficiently powerful neutral States, but the weak neutral State would have the cruel alternative of dismissing the belligerent vessel without the quantity of coal which would be necessary to safeguard its existence, or to expose itself to claims and even to reprisals on the part of the other belligerent.

To adopt the regulation proposed by the Russian amendment is not to open the door to abuse but only to foresee and to regulate for a special case which rarely happens. After all, are not abuses sufficiently prevented by other articles of the Convention, notably, Articles 5 and 9, paragraph 2?

The delegation of Russia regrets, therefore, not being able to share the opinion expressed by his Excellency the first delegate of Japan, that the admission of the exception contemplated by the amendment would have the effect of creating a right to an unlimited prolongation of stay.

It expresses the hope that the Commission will be good enough to adopt the amendment.

Mr. Kriege declares, in the name of the delegation of Germany, that he endorses the Russian proposition as well as the explanations which his Excel-

lency Mr. TCHARYKOW has been good enough to make to the Commission in support of this proposition.

His Excellency Sir Ernest Satow says that the proposed provision appears to him to have for its object only to reintroduce an amendment to Article 12 against which the British delegation expressed its opinion sufficiently in the committee of examination.

It persists in the belief that if it is permitted in any case whatsoever to prolong the length of stay in neutral ports, the door is opened to many abuses; accordingly, the British delegation prefers the present wording of Article 19 and asks that it be maintained.

The President explains that the amendment proposed to Article 19 of the draft by the delegation of Russia, approved by the delegation of Germany, relates to the first part of the third paragraph of the said article and is thus worded: "*Omit in the beginning of the third paragraph of Article 19, the words 'the revictualing and shipping of fuel do not give the right to prolong the lawful length of stay.'*"

After having brought up for deliberation the first two paragraphs of Article 19, which are adopted without remarks, the president puts to a vote the omission of the first part of the third paragraph asked for by the delegation of Russia.

The result of the vote is as follows: 27 yeas, 5 nays, 9 not voting and 2 absent.

Voting for: Germany, Argentine Republic, Austria-Hungary, Bolivia, Brazil, Bulgaria, Chile, Colombia, Ecuador, France, Greece, Haiti, Italy, Mexico, Montenegro, Norway, Panama, Paraguay, Netherlands, Peru, Persia, Roumania, Russia, Salvador, Serbia, Uruguay, and Venezuela

[481] *Voting against:* China, Spain, Great Britain, Japan, and Portugal.

Not voting: United States of America, Belgium, Cuba, Denmark, Dominican Republic, Luxemburg, Siam, Sweden, and Turkey.

Absent: Guatemala and Nicaragua

The last part of this same paragraph of Article 19, worded thus: *If, in accordance with the law of the neutral State, the ships are not supplied with coal within twenty-four hours of their arrival, this period is extended by twenty-four hours*, is then adopted without remarks.

His Excellency Mr. Keiroku Tsudzuki declares that, in view of the change made in the draft by reason of this vote, he withdraws his adhesion to the draft and reserves his vote upon the whole convention. The omission of the first part of the third paragraph of Article 19 *a*, in his opinion, concerns one of what he considers the cardinal points of the draft.

The President passes to Article 20 apropos of which Mr. Kriege, in the name of the delegation of Germany, says that, in the expectation of instructions from his Government, he reserves his vote upon this article.

The article is then adopted. It is the same with regard to Articles 21 and 22.¹

The President then reads Article 23.

¹ Annex 65.

ARTICLE 23

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

His Excellency Mr. **Hammar skjöld** remarks that this article had been voted with a special purpose, that of facilitating an agreement with a view to prohibiting the destruction of neutral prizes. It is solely for this reason that certain States have consented to assume the very heavy burden which, the case arising, this provision may impose upon neutrals. The hoped-for agreement not having been obtained, his Excellency the first delegate of Sweden proposes to the Commission the omission of Article 23.

His Excellency Mr. **van den Heuvel** makes the following declaration:

The delegation of Belgium favors Article 23 for two reasons.

The first is because this article confines itself to removing a prohibition and gives to neutral Powers the right, which they may exercise at will, either to continue to close their ports to prizes or to open them all or certain of them, and to limit access thereto to certain prescribed conditions. Their independence is thus completely recognized and proclaimed.

The second reason reflects our hopes; we have faith in an approaching amelioration of international naval law, and it seems useful to us to [482] prepare for and to facilitate the reforms of the future. Differences of geographical status between the possessions of different States, the fact that some possess ports in all parts of the world while others are deprived of this advantage—these diversities keep a certain number of great Powers recognizing and admitting two *régimes* which are universally desired in the name of equity, and which the Conference has long examined and debated.

I speak of the recognition of the principle of the absolute prohibition of the destruction of neutral prizes. I speak also of the admission of a system relative to enemy private property at sea which is more in accord with law than is that of capture.

Let us smooth the way, gentlemen, for solutions which may bring about a marked progress towards the reign of justice and equity.

His Excellency Sir **Ernest Satow** replies that the British delegation is entirely opposed to Article 23, for, as his Excellency Mr. **HAMMARSKJÖLD** has very justly remarked, this article does not offer any serious guaranty against the right to destroy neutral prizes. As to the argument deduced from the difference between the geographical status of different Powers, it is evident that there has been manifest exaggeration of the importance of this difference, since the partisans of the destruction of neutral prizes have affirmed that the opening of all neutral ports would not change in any way their intention to continue this practice in case of *force majeure*. It is for this reason and for those which have been previously and repeatedly given by the British delegation that the latter is opposed to Article 23 and asks that its omission be put to a vote by the Commission.

The **President** remarks that the omission of Article 23 of the draft is asked by the delegations of Sweden and England. These delegations think that since

there is no accord upon the interdiction of the destruction of neutral prizes, the provision of Article 23 has become superfluous. But on the contrary his Excellency Mr. VAN DEN HEUVEL has set forth with great eloquence, and with remarkably lofty ideas, the value of this article to the draft. He has observed that it was inspired by the great principle of respect for private property at sea, and that by preserving it we will render homage to this exalted idea.

The PRESIDENT then puts to a vote the omission of Article 23 asked by the delegations of Great Britain and Sweden.

There are 7 yeas against 29 nays, 5 not voting and 2 absent.

Voting for: Denmark, Spain, Great Britain, Japan, Norway, Portugal, Sweden.

Voting against: Germany, Argentine Republic, Austria-Hungary, Belgium, Bolivia, United States of Brazil, Bulgaria, Chile, Colombia, Dominican Republic, Ecuador, France, Greece, [Haiti (?)] Italy, United Mexican States, Montenegro, Panama, Paraguay, Netherlands, Peru, Roumania, Russia, Salvador, Serbia, Siam, Turkey, Uruguay, Venezuela.

Not voting: United States of America, China, Cuba, Luxemburg, Persia.

Absent: Guatemala, Nicaragua.

The President therefore declares that Article 23 is maintained.

He then reads Articles 24, 25, 26, and 27,¹ which are successively adopted without discussion.

[483] The PRESIDENT thinks that the draft Convention whose articles have just been voted should be completed by certain final provisions. The Drafting Committee should attend to that; but perhaps Mr. RENAULT, president of the subcommittee, would like to say something relative thereto?

Mr. Louis Renault explains that the indispensable final provisions have not been placed in the draft for the reason that they are now being prepared by the Drafting Committee. The most important provision is evidently that concerning the extent of the application of the Convention. It is probable that the Drafting Committee will prepare a formula stating that in order for the Convention to be applicable, it is necessary that the two belligerents be signatories; otherwise it should not apply, even in regard to neutral signatory States. That is the solution adopted for the Convention creating the International Prize Court.

Regarding the other final provisions, they are merely protocol clauses for which the Commission can refer itself to the Drafting Committee.

The President then takes the floor and delivers the following address:

GENTLEMEN: We have completed our work; have we been successful?

The plenary Conference will utter the final word. Meanwhile I think it my duty to make a statement concerning the work of the Third Commission.

This has been divided into four questions, three of which deal with humanitarian ideas whose progressive application is entirely to the credit of our own era. The fourth question, which we have barely finished, was of a very different character.

We commenced with the adaptation to maritime warfare of the principles of the revised Geneva Convention of 1906. We had to complete the convention which the First Peace Conference established in 1899. Our work was facilitated by the remarkable proposition of the German delegation. We have been able

¹ Annex 65.

to demonstrate how easy it is to act in concert upon the application of principles and ideas which, having matured in the public mind, have entered the universal conscience.

We received from the First Peace Conference the heritage of questions relative to the bombardment of ports, towns and villages by a naval force. We have succeeded in solving certain complicated problems which our predecessors had no desire to broach. Such, gentlemen, is the practical result of a real progress made in the development of humanitarian ideas. This proof should be all the more necessary to us since we have certainly never yielded to those impulses which at times manifest themselves when sentiment holds sway and usurps some of the world space occupied by realities.

The three declarations of 1899, inspired by the principle that belligerents do not have an unlimited right as to the choice of a means of injuring the enemy, were adopted by our predecessors in a very different frame of mind from that prevailing during the study of the third of our questions, that of the laying of torpedoes and submarine mines. The complexity of the interests at stake, the uncertainties of the scientific problems in a matter in which mystery and secrecy hold so large a place, perhaps even other considerations, rendered our task more delicate performance than difficult.

We had to study the various kinds of mines. By analogy with what has been established for certain kinds of projectiles, there was never any [484] question of a general interdiction of all mines and torpedoes. It was desired to limit their employment by putting in first of all the considerations suggested by respect for the principle of the liberty and security of naval lanes.

In order that this principle might be fully applied, it was necessary that we regulate also the other part of the question, that is to say, the part dealing with the places where the use of mines should be permitted. We were occupied with it a long time; and finally, in spite of the very deep regret felt by many of us, we have been obliged, in our turn, to leave to our successors the pursuit of an agreement which we have been unable to attain. Nevertheless, we have not limited ourselves to expressing a *vœu*. We have set the time when the question is to be taken up again and decided. This time will not be more than seven years hence.

The fourth question which was confided to us was, as I have just said, of a very different nature. In approaching it we have fearlessly followed the initiative of our British colleagues and, in seeking to determine the rules to be applied to belligerent war-ships in neutral ports, we accepted the even larger task of presenting to the Conference the draft of a convention concerning the rights and duties of neutral Powers in naval war.

We had before us the rules adopted in the different countries. They constituted incompatible elements, often even contradictory. It was a question of coordinating them, of harmonizing them, and of proceeding to their codification. We found ourselves engaged in a complete elaboration of a uniform legislation, in which principles of justice dominate, to be sure, though they seem to be there merely for the purpose of supplying the legal formulas necessary to the concrete statement of the conciliation of interests, having in view the advantages born of certitude. In order to succeed, it was necessary at first to lay down certain well-established and generally-admitted principles. We then

found ourselves in agreement that the interests of neutrals should be given precedence.

Thus we sought to localize war by facilitating the exercise of neutrality.

I do not plead extenuating circumstances in stating that the time was lacking for the complete success of this work of an almost exclusively diplomatic nature. The conciliation of interests could result only from reciprocal renunciations made with the conviction of acquiring equivalent advantages. It is understood that the *modus operandi* imposed by the exigencies of a world conference could have been good only if, instead of having to commence by setting up guide-posts, it had just been necessary for us to put the finishing touches to a work already prepared in advance.

Let us congratulate ourselves nevertheless for not having become discouraged. We have shown perseverance in a task that has been at times a thankless one. We have had the honor to be assisted by the counsels and large experience of a man whose juridical knowledge is accompanied by a remarkable perception and a very sane judgment. Though I fear to offend the modesty of this perfect savant, I cannot fail in the duty of mentioning his name here again, in the best pages of the history of the Conference. I refer to our colleague, Mr. LOUIS RENAULT. (*Applause.*) Were it not for the fear of imposing upon your kindly attention, I would like to mention specially many others among us who have contributed so largely to a work which, until now, has been unsuccessfully attempted by learned institutions.

It is true that we have not done all. Let us not flatter ourselves with the idea that our work is complete and perfect. We bequeath to our successors the task of revising it. They will find in the goodly number of ideas which we have only outlined, new subjects for development. For myself, I deeply [485] regret not being able to propose to you, in view of the prevailing conditions of our own time, the study and examination of the idea of the limitation of the state of war to certain zones. Perhaps we might have been emanating therefrom the fruitful conception of the localization of naval war. This would have been a great progress. Let us content ourselves with indicating that we have seen the vision of the just and useful things which remain to be done.

Thank you, gentlemen, for your constantly expressed approval of my efforts. Your cordial collaboration will be one of the very dear memories of my life. (*Hearty applause.*)

His Excellency Mr. Nelidow then speaks in the following terms:

GENTLEMEN: We cannot permit the closing of the meetings of the Third Commission without expressing to its president our gratitude and appreciation.

The Third Commission had an extremely difficult task to perform, and if it has not been able to arrive at complete and precise solutions of all the questions mentioned in its program, it is not due to any lack of conscientious and persevering labor, but to the force of circumstances.

The draft, whose examination has just been completed, constitutes a profound study of one of the most important questions of naval law. Up to the present time neither conferences, special commissions nor the institutes of international law have been able to broach the study of the grave problem of the rights and duties of neutrals in naval war.

It was, therefore, a great credit to the Third Commission to undertake it. The simple search of a certain number of solutions of very great significance

constitutes a great progress towards the future codification of international regulations of war at sea. Let us have faith, gentlemen, in an agreement upon the results obtained to-day, which will pave the way for a future conference to seek more easily the equitable regulation of the numerous questions on this important subject which remain to be solved.

I propose, gentlemen, to offer to his Excellency Count TORNIELLI our most hearty thanks for the indefatigable labor, the dogged perseverance, the prudence and spirit of conciliation with which he has directed our debates.

As a matter of fact, it is to him, as well as to the eminent reporter of the Third Commission, that we owe in large part the results of the conscientious labor which ends to-day. (*Applause.*)

The President then adds:

Allow me, in the name of all, to express our compliments and our sincere gratitude to our secretaries. They have, by their activity and competence, given us entire satisfaction. The time will come when they will replace us in the leading rôles. Will they encourage me in the belief that in lending us their arduous assistance, they have not wasted their time? Gentlemen, I thank you. (*Applause.*)

The meeting is adjourned at 5:45 o'clock.

[486]

Annex

DRAFT CONVENTION REGARDING THE RIGHTS AND DUTIES OF NEUTRAL POWERS IN NAVAL WAR

REPORT TO THE COMMISSION¹

Among the topics for the consideration of the Conference the Russian program² mentioned "The rights and duties of neutrals at sea," and, hereunder, the "question of contraband; *the rules applicable to belligerent vessels in neutral ports*; destruction, in cases of *force majeure*, of neutral merchant ships captured as prizes." The first and third questions have been assigned to the Fourth Commission; the second was reserved for the Third Commission.

The Commission had before it four different projects:

¹ This report was submitted by a committee of examination composed of: his Excellency Count TORNIELLI (Italy), chairman; Mr. LOUIS RENAULT (France), reporter; Rear Admiral SIEGEL (Germany), Rear Admiral SPERRY (United States), Captain BURLAMAQUI DE MOURA (Brazil), his Excellency LOU TSENG-TSIANG (China), Mr. VEDEL (Denmark), Captain CHACÓN (Spain), his Excellency Sir ERNEST SATOW (Great Britain), Captain CASTIGLIA (Italy), his Excellency Mr. TSUDZUKI (Japan), his Excellency Mr. HAGERUP (Norway), Captain FERRAZ (Portugal), his Excellency Mr. TCHARYKOW (Russia), his Excellency Mr. HAMMARSKJÖLD (Sweden), and his Excellency TURKHAN PASHA (Turkey). The report has been completed to include the last session of the Third Commission.

² See vol. I, *in initio*.

1. A draft from the delegation of Japan defining the position of belligerent ships in neutral waters;¹
2. A draft from the delegation of Spain on the same subject;²
3. A proposal from the British delegation in the form of a draft Convention concerning the rights and duties of neutral States in naval war;³
4. A proposal from the delegation of Russia containing draft provisions defining the position of belligerent war-ships in neutral ports.⁴

It will be noticed at once that the British proposal has a greater scope than the three other proposals, since, unlike them, it does not confine itself to the status of belligerent war-ships in neutral ports and waters, but also deals with the rights and duties of neutral States in general in naval war.

The Commission has not considered itself bound by the exact terms in which its jurisdiction was defined by the Conference at the time when the several [487] topics were distributed among the Commissions. It has examined the different articles of the British proposition embracing the whole subject of the situation of neutral States in naval war. It is believed that at a time when an International Prize Court is being created, it would be wise to develop to as great a degree as possible a codification of international maritime law in time of war. Thus the work of the Third Commission will be harmonized with that of the Second Commission, which covers the rights and duties of neutral States in war on land. This explains the general title given to the project and accepted unhesitatingly by the committee of examination.

In order to facilitate study of the subject, the second subcommission decided that there should be submitted to it a paper indicating the questions involved in the several proposals. The list of questions⁵ facilitated an exchange of views in the meetings of July 27 and 30 and August 1. The matter was then referred to a committee of examination, which made a thorough study of it in a series of thirteen meetings from August 6 to September 28. The draft which we are about to analyze was submitted to two readings;⁶ the second taking place in the meetings of September 11, 12, and 28, of which the minutes have been distributed. It was finally approved by the Third Commission in its session of October 4.

The necessity of precise regulations having for their end the removal of the difficulties and even conflicts in this branch of the law of neutrality has been asserted on all sides. Recent experience has added its weight to theoretical considerations in an emphatic and most startling manner.

Land warfare regularly pursues its course on the territory of the belligerents. In exceptional circumstances alone is there any direct contact between the armed forces of a belligerent and the authorities of neutral countries; when such contact does take place, as when troops flee into neutral territory, the situation is relatively simple; customary or written positive law applies in a well-defined manner. The case is otherwise in naval war. The war vessels of the belligerents cannot always remain in the theater of hostilities; they need to enter harbors, and they do not always find harbors of their own countries near by. Here geographical situation exerts a powerful influence upon war, since

¹ *Post*, Third Commission, annex 46.

² *Ibid.*, annex 47.

³ *Ibid.*, annex 44.

⁴ *Ibid.*, annex 48.

⁵ *Ibid.*, annex 49.

⁶ *Ibid.*, annexes 55 and 63.

the ships of the belligerents will not need to resort to neutral ports to the same extent.

Does it result from this that they have a right to unrestricted asylum there, and may neutrals grant it to them? This is contested. The distinction just indicated is the natural consequence of what takes place in time of peace. Armed forces of one country never enter the territory of another State during peace. So when war breaks out there is no change; and they must continue to respect neutral territory as before. It is different with naval forces, which are in general permitted to frequent the ports of other States in time of peace. Should neutral States when war breaks out brusquely interrupt this practice of times of peace? Can they act at their pleasure, or does neutrality restrain their liberty of action? While it is understood that when belligerent troops penetrate neutral territory they are to be disarmed because they are doing something which would not be tolerated in time of peace, the situation is different for the belligerent war-ship that arrives in a port which it has customarily been able to enter in time of peace and from which it might freely depart.

What reception then is this ship to meet with? What shall it be allowed to do? The problem for the neutral State is to reconcile its right to give asylum to foreign ships with its duty of abstaining from all participation in hostilities. This reconciliation, which is for the neutral to make in the full exercise of its sovereignty, is not always easy, as is proved by the diversity of rules and of [488] practice. In some countries, the treatment to be accorded belligerent war-ships in neutral ports is set forth in permanent legislation (*e.g.*, the Italian code on the merchant marine)¹; in others rules are promulgated for the case of each particular war by proclamations of neutrality. And not only do the rules promulgated by the several countries differ, but even the rules prescribed by a single country at different times are not identical; moreover, sometimes rules are modified during the course of a war.

The essential point is that everybody should know what to expect, so that there will be no surprise. The neutral States urgently demand such precise rules as will, if observed, shelter them from accusations on the part of either belligerent. They decline obligations that would often be disproportionate to their means and their resources or the discharge of which would require on their part measures that are veritably inquisitorial.

The starting-point of the regulations ought to be the sovereignty of the neutral State, which cannot be affected by the mere fact that a war exists in which it does not intend to participate. Its sovereignty should be respected by the belligerents, who cannot implicate it in the war or molest it with acts of hostility. At the same time neutrals cannot exercise their liberty as in times of peace; they ought not to ignore the existence of war. By no act or omission on their part can they legally take a part in the operations of war; and they must moreover be impartial.

It seems of little use to develop these general considerations, since they might give rise to lengthy discussions, inasmuch as neutrality is not viewed in the same light by everybody. It is better to confine ourselves to the study of propositions dealing with particular cases which, while naturally to be regulated in accordance with principles, are presented in concrete and precise shape.

We shall proceed to comment upon the several articles of the project.

¹ *Post*, Third Commission, second subcommission, annex B to the fourth meeting.

The principle which it is proper to affirm at the outset is the obligation incumbent upon belligerents to respect the sovereign rights of neutral States. This obligation is not a consequence of the war any more than the right of the State to inviolability of its territory is a consequence of its neutrality. The obligation and the right are inherent in the very existence of States, but it is well to affirm them in circumstances where they are most liable to be misunderstood. As was said by Sir ERNEST SATOW in commenting upon an article of the British proposal from which Article 1 of our draft is borrowed almost *verbatim*, we have here "the expression of the master thought of this division of international law" (meeting of July 27).

The principle is applicable alike to land warfare and to naval warfare, and we are not surprised that the regulations elaborated by the Second Commission on the subject of the rights and duties of neutral States on land begin with the provision: "The territory of neutral States is inviolable."

Generally speaking, it may be said belligerents should abstain in neutral waters from any act which, if it were tolerated by the neutral State, would constitute failure in its duties of neutrality. It is important, however, to say here that a neutral's duty is not necessarily measured by a belligerent's duty; and this is in harmony with the nature of the circumstances. An absolute obligation can be imposed upon a belligerent to refrain from certain acts in the waters of a neutral State; it is easy and in all cases possible for it to fulfill this obligation, whether harbors or territorial waters are concerned. On the other hand, the

neutral State cannot be obliged to prevent or check all the acts that a belligerent might do or wish to do, because very often the neutral State will not be in a position to fulfill such an obligation. It cannot know all that is happening in its waters and it cannot be in readiness to prevent it. The duty exists only to the degree that it can be known and discharged. This observation finds application in a certain number of cases.

Sometimes it is asked whether a distinction should be made between harbors and territorial waters; such a distinction is recognized with respect to the duties of a neutral, which cannot be held to an equal degree of responsibility for what takes place in harbors subject to the direct action of its authorities and what takes place in its territorial waters over which it has often only feeble control; but the distinction does not exist with respect to the belligerent's duty, which is the same everywhere.

ARTICLE 1

Belligerents are bound to respect the sovereign rights of neutral Powers, and to abstain in neutral territory or neutral waters from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

As a consequence of the preceding rule, every act of hostility in the territorial waters of a neutral State is forbidden (Russian proposition, Article 2;¹ Italian code on the merchant marine, Article 251²). This comprehends not only hostilities, properly so called, as combats, but also such operations of naval warfare as capture and the exercise of the right of search. The order in which these last two acts was mentioned has caused surprise. This order, however, is explained by the fact that capture is the most serious act. The exercise of the

¹ *Post*, Third Commission, annex 48.

² *Post*, Third Commission, second subcommission, annex B to the fourth meeting.

right of search, even if it should not end in seizure of the ship, also constitutes an act of hostility.

ARTICLE 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

It was thought necessary to provide for the case where a capture has taken place in the territorial waters of a neutral State. We have taken substantially Article 28 of the British proposal.¹

Two cases are possible: (a) where the prize is still within neutral jurisdiction, and (b) where it is not.

In the first case it is for the neutral State to take the direct measures necessary to undo the wrongful act contrary to neutrality of which a neutral or hostile ship—it matters little which—has been the victim. The British proposal says that the neutral Power shall release the prize; this expression seemed too positive, because the neutral Power will not always have the necessary means to do so.

If it can, it should do so. The prize being released, its officers and crew are naturally free to dispose of their ship as suits them. The prize crew put on board by the captor is interned because it is found to be illegally within the neutral's waters.

In the case where the prize is beyond the jurisdiction of the neutral State, the latter no longer has direct control over the prize. What can it do?

[490] Address the belligerent Government to which the captor ship belongs. It will do so, first to obtain satisfaction for the violation of its sovereignty, and, secondly, to forestall a claim on the part of the State to which the captured vessel belongs. The belligerent must liberate the prize with its officers and crew; and here we have been able to use a more forceful expression than in the preceding case because we are dealing with an act which the belligerent can at once accomplish.

In both cases the fact of capture within neutral territorial waters is presumed to be proved. Of course, it is possible that a dispute may arise on this point; and the captor may pretend that at the time of the seizure he was beyond the territorial waters. This is a simple question of fact. The neutral Power will proceed prudently and carefully in gathering its information before liberating the prize or even making a diplomatic claim.

At the time of the second reading a difficulty was pointed out with regard to the second case. Admiral SIEGEL remarked that the provision did not harmonize with a provision in the project for the establishment of an International Prize Court. According to Article 3 of the latter project the judgment of a prize tribunal may be brought before the International Prize Court, even when it relates to an enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim. The report submitted by the First Commission says on this subject:

In such circumstances the neutral Power may choose between two procedures. It may select the diplomatic channel and address itself directly to the Government of the captor in order to obtain satisfaction; or it may leave the owner of the captured ship, if the legislation of the captor permits, to

¹ *Post*, Third Commission, annex 44.

make his complaint of the irregularity of the seizure before the national tribunals, and then, if in spite of his so doing the irregularity is not admitted, it may take the matter to the International Court.

Was not the alternative that is allowed the neutral State contrary to the absolute rule here proposed? Some thought so and believed that it would be better to omit the paragraph relative to the case where the prize is not in the jurisdiction of the neutral State. Others, in order to avoid a regrettable omission, wished to substitute an option for an obligation and to say that the neutral State *may address* and not *addresses*. The latter view was accepted by 9 votes (Germany, Denmark, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) to 4 (Brazil, Spain, Great Britain, and Japan) and 1 abstention (United States). The present wording was adopted in the meeting of September 28.

At bottom there was really no disagreement. There are cases where the neutral State will have no choice. For example, when the State of the captor is not a party to the Prize Court Convention the neutral State can only make a diplomatic claim; and likewise if the neutral State is not a party thereto. The alternative exists only when both interested States are parties to that Convention. Then the neutral State will do as it likes. Even in cases where it does not wish to proceed with a diplomatic claim in its strict sense, it will notify the fact to the captor's State, which will perhaps liberate the prize of itself to avoid further difficulties, diplomatic or judicial.

ARTICLE 3

When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, on the demand of that Power, the captor Government must liberate the prize with its officers and crew.

[491] It has long been accepted that a prize court cannot be set up in neutral territory. Article 25 of the British proposal, which is to this effect, has been slightly modified in order to take into account a scruple arising from the institution of the International Prize Court which will sit in neutral territory.

It was observed that the rule is absolute and allows no exception, even in the case of a country where the belligerent exercises a right of jurisdiction. Such a right, which has a special purpose and a limited scope, ought not to extend to the consummation in neutral territory of an act of war like capture.

ARTICLE 4

A prize court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

Article 9 of the British proposal,¹ Article 1 of the Japanese proposal,² and Article 3 of the Russian proposal,³ all say that neutral territory cannot serve as a base of operations for a belligerent. This implies a prohibition for the belligerent and a duty for the neutral. While the rule can be enunciated

¹ *Post*, Third Commission, annex 44.

² *Ibid.*, annex 46.

³ *Ibid.*, annex 48.

from either point of view, it was preferred to give it the form of an inhibition against belligerents. The Treaty of Washington, on the contrary, had said: "A neutral Government is bound . . . secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other."

While the principle is easily stated, its applications require much care. We have limited ourselves to giving one example by prohibiting a belligerent from erecting on neutral territory a wireless telegraphy station or any apparatus for the purpose of communicating with a belligerent force on land or sea. The same provision occurs in the draft regulations respecting the rights and duties of neutral States in war on land. The two provisions correspond exactly, for communication may be made from neutral territory either with an army or with a fleet.

We cannot expect to prevent the captain of a belligerent ship from communicating with the inhabitants or the consul of his country, or from using telegraph or telephone cables of the neutral country. There is a formal provision to this effect in Article 8 of the draft regulations on land warfare already referred to. It was suggested that we forbid making a neutral port a *place for concentration or rendezvous*. But it is hard to define what this would mean, and it would be almost impossible for neutral States to deal with the intention which brings a belligerent vessel into their waters. The interest in this question will be greatly diminished by the fixing of the maximum number of belligerent ships that may stay in a port at the same time.

ARTICLE 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

In the meeting of the committee of examination held August 26, the British delegation proposed to insert in Article 5 of the draft, paragraph *b* of [492] Article 10 of the proposition of Great Britain.¹ It had already urged the need of this article, as appears from the minutes of the meeting of the subcommission held July 30: "Sir ERNEST SATOW maintains that it seems to him necessary to establish a distinction in the provisioning that can be effected in a neutral port. It is allowable to buy food to sustain the crews for the time being, whilst, on the other hand, revictualing by auxiliary vessels would constitute a real operation of war." The chairman was of the opinion that this prohibition was contained in those of Article 6 of the British project, and at the same time he adverted to the second point of Article 6 of the Treaty of Washington.² The delegation of Russia for its part declared that the second point of Article 6 of the Treaty of Washington fully expressed its intention and that it was ready to accept the sense thereof when the definitive text should be drawn up.

It was decided that the committee of examination should consider the matter, and in its meeting of August 26, already spoken of, the proposal of the delegation of Great Britain was carried by a vote of 10 (United States, Brazil, Denmark, Spain, Great Britain, Japan, Norway, Portugal, Sweden,

¹ *Post*, Third Commission, annex 44.

² *Post*, Third Commission, second subcommission, annex A to the fourth meeting.

Turkey) against 4 (Germany, France, Italy, Russia). The question came up again September 11, on the second reading, when the proposal, submitted in the following form, "It is likewise forbidden belligerent ships to revictual in neutral waters by means of auxiliary vessels of their fleet," and numbered 5bis, was carried by a vote of 5 (United States, Brazil, Spain, Great Britain, Japan) against 3 (Germany, France, Russia), there being 6 abstentions (Denmark, Italy, Norway, Netherlands, Sweden, Turkey).

In the meeting of the committee of examination held September 28, the British delegation waived the insertion in the text of the Convention of the article it had advocated, although still holding the view it had expressed in the meeting of July 30; and the delegation of Russia renewed the reserves it had formulated in the meeting of the committee of examination held August 26 when it voted against the British proposal. It was also understood that the article in question contemplated not only food supplies but also coal. The disappearance of this article from the draft Convention is by no means to be taken as an acceptance of the whole draft by the British or Russian delegations.

It goes without saying that a neutral State cannot furnish war-ships, arms, etc., to a belligerent in any manner. Article 3 of the British proposition spoke only of the *sale* but we have used the word *supply*, which has a much broader meaning.

ARTICLE 6

The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

On the other hand, the practice has become established that a neutral State is not bound to prevent the export of arms or ammunition destined for one or other of the belligerents, whether for an army or for a fleet. There is a like provision in the draft regulations already mentioned. A neutral State may, moreover, if it prefers, forbid export of the articles in question. It should then simply put into force a prohibition that applies equally to the two belligerents.

[493]

ARTICLE 7

A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

The first rule of Washington¹ defined the obligation of a neutral Government with respect to arming or equipping and the departure of ships intended for one of the belligerents. Articles 5, 7, and 8 of the British proposition² reproduced this rule with certain additions. The provision adopted by the committee reproduces the rule of Washington with two slight alterations. The expression *due diligence*, which has become celebrated by its obscurity since its solemn interpretation, has been omitted; we have contented ourselves with saying, in the first place, that the neutral is *bound to employ the means at its disposal* . . . and, in the second, to *display the same vigilance*. . . .

In the subcommission's meeting of July 30 the Brazilian delegate made the following declaration: "Inasmuch as it is not permissible that after the declaration of war belligerents should continue to acquire war vessels in neutral

¹ *Post*, Third Commission, second subcommission, annex A to the fourth meeting.

² *Post*, Third Commission, annex 44.

ports, it is necessary to state at least that the reasons against this practice cannot apply to vessels in course of construction that have been begun long before the opening of hostilities at a time when they could not have been foreseen; and inasmuch as under these circumstances it would not be at all equitable to deprive belligerents of a vessel whose acquisition was agreed upon before the imminence of war was known, it is proper that such ships be considered an integral and recognized part of the navy of the country concerned. . . .” Accordingly the delegation of Brazil filed the following amendment: “War-ships in course of construction in the ship-yards of a neutral country may be delivered with all their armament to the officers and crews appointed to receive them, when they have been ordered more than six months before the declaration of war.”¹

The discussion on this amendment took place August 1. The Brazilian proposal was opposed by Mr. DRAGO, speaking for the Argentine delegation, and did not come to a vote as Mr. BURLAMAQUI DE MOURA deferred his reply until a later meeting. When the committee of examination took it up in the meeting of August 26, it was rejected by 7 votes (United States, Spain, France, Great Britain, Italy, Japan, Sweden) against 2 (Brazil, Denmark), there being 5 abstentions (Germany, Norway, Portugal, Russia, Turkey).

ARTICLE 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, this vessel having been adapted entirely or partly within the said jurisdiction for use in war.

The committee of examination had some difficulty in deciding upon the wording of the next article, although there were no fundamental differences of opinion.

[494] The first draft stated: “A neutral State may permit under determined conditions and even forbid, if it deems it necessary, belligerent war-ships or prizes to enter its ports or certain of its ports. The conditions, restrictions or prohibitions must be applied impartially to the two belligerents. A neutral State may forbid any belligerent ship which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.”

The substance of these propositions evidently could not be disputed; but the form in which they were expressed was objected to for two very different reasons. On the one hand, his Excellency Mr. TSUBUZUKI contended that the articles suggested that neutral ports would be freely open to belligerent war-ships, whereas the increasing tendency of writers was to recognize that it was a duty for neutrals to admit belligerent war-ships to their ports only in cases of distress. On the other hand, Admiral SPERRY, speaking for the delegation of the United States, declared that he could not accept Article 8 of the project for the reason that as a State is sovereign within its own jurisdiction what it does to safeguard its neutrality is done in virtue of its own rights.

The British delegation has also proposed the following wording:

¹ *Post*, Third Commission, annex 52.

A neutral State may forbid, if it deems it necessary, all access to its ports or certain of its ports, or passage through its territorial waters, to belligerent war-ships or prizes. The conditions, restrictions or prohibitions shall apply impartially to both belligerents. A State may forbid any belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or territorial waters.¹

After earnest discussion the following essential points were agreed upon: There is no question here of recognizing by treaty the rights of a neutral State that are derived from its sovereignty and preexist war. The only element that war introduces is the obligation to treat the two belligerents in the same way and to apply to them impartially the conditions, restrictions or prohibitions that it has pleased the neutral Government to make. But a prohibition may be applied to a belligerent ship which has failed to conform to the regulations of the neutral or has violated neutrality. There is no intention to limit to such ships alone the right of the neutral to forbid access to its ports, but merely to excuse it in such cases from ensuring equal treatment to the vessels of both belligerents. We have therefore confined ourselves to these points in the wording of Article 9, which, in the end, gained the support of all.

It is to be noted that with ports and roadsteads mention is made of *territorial waters*, as was done in Article 30 of the British proposal. The question has been raised as to the extent of the right of a State with respect to its territorial waters. Does this right go so far as to forbid passage through it? We shall return to this question under Article 10. But, in the committee of examination (meeting of August 26), Sir ERNEST SATOW, speaking of Article 30 of the British proposition, explained that it was necessary to distinguish *access* from simple *passage*. Here we are dealing with the prohibition by the neutral, if it sees fit, of a stay in its waters and not of a simple passage through them.

ARTICLE 9

A neutral Power must apply impartially to the two belligerents the conditions, [495] restrictions or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports, roadsteads or territorial waters.²

Passage through neutral territorial waters has given rise to several difficulties. The thirty-second and last article of the British proposal said: "None of the provisions contained in the preceding articles shall be interpreted so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent." This might be understood to mean that a neutral had not a right to forbid war-ships from passing through its waters, and it has been previously explained that this innocent passage must be distinguished from access or stay in territorial waters.

In the meeting of July 27 the first delegate of Sweden, referring to

¹ *Post*, Third Commission, annex 56.

² [The words "roadsteads, or territorial waters" do not appear in this paragraph in the draft Convention (vol. i, p. 321 [328]) which was appended to this report and submitted to the Conference. See Mr. RENAULT's report on the Final Act, *ibid.*, p. 577 [583], and also the Convention as signed, *ibid.*, p. 673 [682].

Article 30 of the British draft, recognizing that a neutral State has the right to forbid in whole or in part access to its ports or territorial waters, had called attention to the special condition of straits which might be situated within the area of territorial waters, and suggested the addition of a provision voted by the *Institut de Droit International* in 1894: "Straits which serve as a passage from one open sea to another open sea can never be closed."

In the meeting of July 30, Mr. VEDEL, the Danish delegate, read the following declaration:

The amendment which the Danish delegation proposes to Article 32 of the British project¹ limits to territorial waters uniting two open seas the right of mere passage of the war-ships and auxiliary ships of the belligerent.

The Danish delegation in presenting this amendment is moved specially by the following reasons: the recognition of an unlimited right of mere passage for the war-ships of belligerents can hardly be reconciled with a right of neutrals to prohibit, for the purpose of defending their neutrality, entry into their interior waters, notably those with two entrances which offer special opportunities to a belligerent fleet as a base of operations as well as for certain illegal acts in neutral waters. To accord belligerents the right of mere passage through territorial waters but to authorize neutrals at the same time to prohibit their entry would be to take away with one hand what is given with the other. As the laying of submarine mines by neutrals is being considered by another commission I cannot enter into the details of this question. I desire merely to draw attention to the connection between the two subjects and the consequent interest which there is in not limiting by the Convention the exercise of the sovereign rights of the neutral over its territorial waters in such a way as to deprive it of one of the most effective means of maintaining the important regulations of this very Convention.

The question was referred to the committee of examination, where it was discussed without, however, any resolutions being passed on the points mentioned. From the opinions there expressed it seems that a neutral State may forbid even innocent passage through limited parts of its territorial waters so far as that seems to it necessary to maintain its neutrality, but that this prohibition cannot extend to straits uniting two open seas.

The formula adopted in Article 10 is based on an amendment of the [496] British delegation,² and does not touch at all upon the preceding questions, which are left under the empire of the general law of nations. It confines itself to saying that the passage through neutral territorial waters of war-ships or prizes belonging to belligerents does not affect the neutrality of the State, and thus implies at the same time that the belligerents do not contravene neutrality by passing and that the neutral does not fail in his duties by permitting them to pass.

In spite of the innocuous character of the provision, Admiral SPERRY declared that he could not accept this article by reason of the political considerations involved in the question of passage through territorial waters.

At the subcommission's meeting of July 30 his Excellency TURKHAN PASHA read the following declaration:

¹ *Post*, Third Commission, annex 45.

² *Ibid.*, annex 56.

The Ottoman delegation deems it its duty to declare that, under the exceptional condition created for the straits of the Dardanelles and the Bosphorus by treaties in force, these straits, which are an integral part of Turkish territory, can in no case be brought within Article 32 of the British proposal. The Imperial Government could undertake no engagement whatever tending to limit its undoubted rights over these straits.

Record was made of this declaration, which had been repeated on several occasions, and was on the last occasion made with reference to this Article 10.

His Excellency Mr. TSUDZUKI also declared that the Japanese Government undertook no engagement concerning the straits which separate the numerous islands and islets composing the Japanese Empire and which are simply integral parts of the Empire.

ARTICLE 10

The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

According to the Russian proposal, Article 7, paragraph 3,¹ no pilots can be furnished ships of war of belligerents during their stay in neutral ports and territorial waters without the authorization of the neutral Government. This rule did not seem very satisfactory because it is not clear what is the meaning of authorization of the neutral Government. Some provision is necessary because difficulties have sometimes arisen. It is agreed on this point that a neutral State may allow belligerent war-ships to employ its licensed pilots. It is not obliged to furnish pilots, but if there are any, the latter may work for the belligerents. Besides, a State may even require that its pilots be employed in certain passages. The word "licensed" is used, not "authorized," to indicate that we mean official pilots, not pilots who might be authorized in each particular case.

ARTICLE 11

A neutral Power may allow belligerent war-ships to employ its licensed pilots.

We now come to one of the greatest difficulties of the subject, the length of stay of belligerent war-ships in neutral ports.

According to Article 4 of the proposal of Russia,² "it belongs to the neutral State to fix the period of stay to be accorded to war-ships of belligerent [497] States in the ports and territorial waters belonging to that neutral State."

According to Article 3 of the proposal of Spain,³ Articles 11 and 12 of that of Great Britain,⁴ and Article 2 of that of Japan,⁵ belligerent war-ships may stay in neutral ports for twenty-four hours only, save in exceptional cases. The absolute contradiction between the proposed texts was pointed out in the subcommission's meeting of July 30, and the committee of examination was entrusted with the task of finding some ground for compromise. Its eminent chairman has formulated a proposition which takes into account both plans.

¹ *Post*, Third Commission, annex 48.

² *Ibid.*

³ *Ibid.*, annex 47.

⁴ *Ibid.*, annex 44.

⁵ *Ibid.*, annex 46.

The right of the neutral State to fix the length of stay was affirmed, but in a case where this right is not exercised by it, this period would be twenty-four hours. The delegations of Great Britain, Japan and Portugal accepted this plan, but the delegations of Germany and Russia opposed it.

The latter delegations proposed to make a distinction between different neutral ports according as they are more or less distant from the theater of war, by allowing a definite period to be fixed for ports situated in its immediate proximity, but no definite limit for ports not so situated.

At the time of the second reading the German delegation presented an amendment by the terms of which "belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State situated in the immediate proximity of the theater of war for more than twenty-four hours, except in the cases covered by the present Convention." A statement of the reasons therefor accompanied the amendment.¹

The reasons for and against were carefully set forth in the committee of examination, especially at the time of the second reading (minutes of the meetings of September 11 and 12). It will suffice to make a faithful analysis of them.

The German delegation states the plan presented by it as follows:

In proximity to the "theater of war" international regulations would fix the stay of belligerent war-ships in neutral ports and roadsteads.

For waters beyond the theater of hostilities the German delegation accepts the French rule which prescribes no limit of time determined in advance, provided the belligerent war-ships respect the given rules.

In other regions the neutral State would therefore itself regulate the stay of the ships. The expression "theater of war" is here employed *in a special sense*, and any other expression, as field of action of the belligerents, would suffice, provided there is accepted the dominant idea which considers as the theater of war the sea area where war operations are taking place or are about to take place or where such an operation can take place by reason of the presence or the approach of the armed forces of both belligerents. Thus the approach of *both* adversaries who are relatively near is necessary to create a "theater of war." The case where an isolated cruiser would exercise the right of capture or search, or in the case where a naval force of only one of the belligerents is passing, is not here contemplated. The majority of States are not able to control what goes on along all their coasts, which are sometimes of great extent; and international regulations will remain a dead letter unless there is some surveillance. Such a surveillance can be effective only in restricted regions. A neutral State can control its waters near that part of the sea where a naval battle takes place, as that area is always comparatively small. It is here that the fate of the fleets will be decided and special vigilance will be here exerted.

To the objection that it is impossible to define exactly the limits of the theater of war and that this definition cannot be left to neutrals as two [498] neighboring neutral Powers might have a different understanding on the subject, which would be a source of complications, it is answered that it does not seem to be very difficult to determine where the theater of war is. If, for example, we take the Spanish-American War of 1898, it is clear that

¹ *Post*, Third Commission, annex 64.

the theaters of war were in the Philippines and the West Indies, and not at all in the Mediterranean nor in the Eastern Atlantic. So there is no reason to fear that difficulties would arise in practice. In our day, with its multiplied means of communication, neutrals will always know the places where the naval forces are stationed. They will be in a position to determine whether these naval forces are preparing to approach their coasts, and they will declare such regions "the theater of war," and take steps to learn whether either of the belligerents is visiting their ports. The neutral State can then take the necessary measures to cause the visitor to leave the port within twenty-four hours. As the neutral is the sole judge of this question, because it is he and not the belligerent who determines what is to be considered the theater of war, there is no danger of dispute. Such is the rule that Germany followed in the war in the Far East, and experience has shown that it answered the necessities of the situation.

Accordingly, a strict international rule is proposed for the theater of war; such a rule is not necessary for areas outside that theater. By accepting this proposal, neutrals are not embarrassed by the responsibility which is incumbent upon them if the strict twenty-four hour rule is accepted, for they would not be obliged to watch their whole seacoast, something which is impossible for most of them to do. When a naval action is about to take place in the Indian Ocean, it is not necessary for the Powers of the north of Europe to watch over their ports and roadsteads; if the theater of war is in the Mediterranean, the coasts of the two Americas need not be kept under strict control.

The delegation of Russia supported this compromise measure presented by the delegation of Germany. It could not agree that the so-called twenty-four hour rule established in the domestic legislation of Great Britain and some other States should be considered as a universal rule. It believes that the French rule, which does not provide any limit of time determined upon in advance, and which is accepted by Germany and Russia, has a better claim to be generally adopted. Nevertheless, in a spirit of compromise, the Russian delegation accepts the distinction that has just been suggested.

The British delegation raised several objections to this plan, some of which have been mentioned above. The principal objection is based on the uncertainty inherent in a determination of the theater of war.

In contrast with the case in land warfare, the theater of naval war is unlimited; it includes all the oceans, because hostilities can break out anywhere. From the moment a war-ship leaves one of its own ports it is liable to encounter an adversary. With steam and the progress made in speed the theater of hostilities, properly so called, is constantly shifting.

It would be a very difficult task, and at the same time a great responsibility, for neutral Governments to have to modify, according to these changes, the *régime* applicable in their ports. Besides, is it not inconsistent to admit that the presence of a war-ship of one of the belligerents in certain places is not sufficient to make such places a theater of war, while at the same time this [499] ship can commit hostilities and capture and search merchant vessels?

The twenty-four hour rule adopted by England forty-five years ago, and accepted by a large number of Powers, has been tried out; it has the great advantage of being a precise rule, easy for the neutral to apply, whereas the plan proposed by Germany forces the neutral to make a study of and form

an opinion upon what is sometimes a very delicate case. Then complaints may arise on the subject of such opinions, which indeed may perhaps be at variance even in the case of two States in the same geographical situation.

The plan based on the distinction between nearness and remoteness from the theater of war was also opposed by the delegation of the Netherlands, through Mr. DE BEAUFORT, as being of a nature to beget difficult complications for neutrals.

The article proposed, with the addition of the words "situated in the immediate proximity of the theater of war," was rejected by 7 votes (United States, Spain, Great Britain, Italy, Japan, Netherlands, Turkey) to 4 (Germany, Brazil, France, Russia); there were 3 abstentions (Denmark, Norway, Sweden).

The German and Russian delegations then asked for the omission of this provision with reference only to the case where a belligerent war-ship enters a neutral port with no special purpose; other clauses of the project provide for the cases where a ship enters to revictual, repair, etc. Is not that sufficient? The request for omission obtained only 2 favorable votes (Germany, Russia) and was negatived by 10 votes (United States, Brazil, Denmark, Spain, France, Great Britain, Italy, Japan, Sweden, Turkey). Norway and Netherlands abstained from voting.

The rule admitted by the majority of the committee is, then, that in the absence of special provisions in the legislation of a neutral State, belligerent vessels are forbidden to remain in the ports, roadsteads, or territorial waters of such State longer than twenty-four hours. The idea is that a precise rule is indispensable. Each State is left free to establish it; in default of its establishment, the Convention fixes the period at twenty-four hours.

It goes without saying that in every country the legislation thereof will determine the nature of the official act by which the fixing of the period referred to will be made: a law, properly so called, a decree or proclamation, an executive order, etc.

At the close of the deliberations of the committee of examination, his Excellency Mr. TCHARYKOW made the following remarks:

Thanks to the spirit of conciliation which has never failed to animate us we have been able to come to an agreement upon the greater number of the questions. One alone remains undecided and it is an important one: The question of the period of stay.

In the votes taken on this point, it is seen that two great Powers have maintained the same objections for two months against the proposed wording, and have made it known that they cannot and ought not accept the twenty-four hour rule. We have already said and we now repeat that in this Conference we must seek not for a mere majority as against a minority, but quite on the contrary unanimity on all questions on some common ground of compromise. It is in this spirit that the delegation of Russia would like to suggest for the case where the question of the theater of war would not find a satisfactory solution, a new wording which seems to it to be of such a nature as to satisfy all interests. We have debated upon the quantity of coal; but, whatever this quantity is to be, it is necessary to leave to the interested parties the time necessary to load it, or this permission would be a useless one. Now we have all recognized that a ship has a right to exist on the sea and that it cannot be placed in the position of becoming a derelict.

[500] Article 12 therefore might be worded as follows:

In the absence of contrary provisions of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power beyond the time necessary to complete the supplies indicated in Article 19 of the present Convention.

It will be noticed that this formula accords with the general idea of the committee's draft, in that it is always for the neutral State to fix the length of stay; but, if the period is not thus fixed, it is proposed to give the time necessary for provisioning instead of an invariable period of twenty-four hours.

In the meeting held September 28 his Excellency Mr. TCHARYKOW again spoke in support of his amendment to Article 12 and proposed to supplement it with the following paragraph:

However, the said vessels may always stay twenty-four hours without its being necessary that their stay be based on any special reason.

His Excellency Mr. TSUDZUKI said that he could not support the proposal. Coal is given only with a humanitarian purpose, and the wording offered by his Excellency Mr. TCHARYKOW would imply the right to make use of a neutral port as a base for coal, that is to say, as a strategic base, properly so called. He added that Article 12 in the form given it by the project before them had been accepted as a compromise and marked the extreme limit of the concessions that the delegation of Japan could make.

His Excellency Sir ERNEST SATOW, too, thinks that he cannot accept that wording because it appears to do away with the twenty-four hour rule which Great Britain holds to. Moreover, in most ports supplies of coal and food can be taken on in six hours; and it is therefore useless to stipulate for a period in any way unlimited. This statement of fact was questioned by his Excellency Mr. HAGERUP, who said that in most of the ports of Norway it would require twenty-four hours for a large war-ship to be provided with the necessary coal. To this Sir ERNEST SATOW replied that he had meant ports where it was customary to coal.

His Excellency Mr. HAMMARSKJÖLD declared that he would gladly support the Russian proposal if it would facilitate an agreement, and he suggested an amendment as follows:

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent vessels are not permitted to remain, except in the cases covered by the present Convention, in the ports, roadsteads, or territorial waters of the said Power more than twenty-four hours or more than such further time as may be necessary to complete the supplies indicated in Article 19 below.

It has been clearly understood that the legislation of the neutral State, if any, must be perfectly obeyed. If it lays down a fixed period, it is necessary to conform to that and no supplementary period applies. It is only in the case where, in the absence of a local rule, the conventional period of twenty-four hours would apply, that the additional period in the sense indicated could take effect.

The committee did not vote on this proposal, reserving for the Commis-

sion the business of deciding whether the article as drafted should be kept or whether the amendment should replace it.

ARTICLE 12

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

[501] The provision on the length of stay naturally applies to belligerent war vessels found in a neutral port at the time of the opening of hostilities, as well as to those that enter during the course of the war.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship that it will have to depart within twenty-four hours or within the time prescribed by local regulations.

Even those who think that the length of stay in neutral waters should be fixed for belligerent war-ships admit that this period may be extended in certain exceptional cases. There is not, however, complete agreement as to the number of these exceptions. Article 2*a* of the Japanese proposition¹ mentions only stress of weather; Article 3 of the Spanish proposal² mentions damage, stress of weather, or other *force majeure*; and Article 5 of the Russian proposal³ says that the stay may be prolonged if stress of weather, lack of provisions, or damage prevents the vessels from putting to sea.

Stress of weather and damage were accepted with no difficulty. The senior delegate of Japan, however, observed that the matter of damage may give rise to abuses and cause evasion of the rule as to length of stay. Would it not be possible to set a maximum period within which repairs must be made? It was answered that this was very difficult, because it would depend on the port where the vessel was and on the facilities there found, and that, besides, the neutral authorities could settle what time was necessary and exercise control. It was decided not to fix such a period.

As we are dealing with a prohibition addressed to the belligerent, this prohibition can include the waters as well as the ports and roadsteads. But the neutral State cannot be responsible except so far as it knows or can know of the presence of war-ships; this knowledge can more easily be had with regard to ports and roadsteads than with regard to other waters.

The Brazilian delegation had, in the meeting of July 27, proposed that the article should state that the rules on the length of stay do not apply to vessels in a port solely for the protection of its nationals, as these vessels have a very different function from that of war-ships received under the right of asylum. They are charged with a mission of protection, and consequently might stay in neutral ports in time of war as in times of peace. Although it was asked whether the case could be supposed where in one of the countries represented at the Conference the presence of a war-ship could be deemed necessary for

¹ *Post*, Third Commission, annex 46.

² *Ibid.*, annex 47.

³ *Ibid.*, annex 48.

the protection of foreigners, the case has occurred and might occur again. But it did not in its nature seem one to be made the subject of a conventional stipulation.

On the other hand, it was easily admitted that the limitation of stay has no reference to war-ships devoted exclusively to scientific, religious, or charitable purposes. This especially applies to military hospital ships, for which the Convention of July 29, 1899, contains a formal provision to this effect (Article 1, paragraph 2), which was retained at the time of its revision by the present Conference.

[502]

ARTICLE 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to scientific, religious, or charitable purposes.

Article 3 of the Japanese proposal¹ says: "More than three belligerent vessels belonging to the same State or its allies cannot anchor at one time in the same neutral port or waters." This evidently contemplates a restricted area and not all the waters of one neutral State. The British delegation supported the Japanese proposal, remarking that the number of three vessels was a common number which is accepted by certain States even for times of peace. In this way there would be a guaranty against concentration of belligerent vessels in a neutral port which would thus serve them as a base of operations.

Admiral SIEGEL objected that Germany and other States had not fixed on any number for times of peace; and that for times of war a neutral State should be left free to fix it.

The majority of the committee was of opinion that the same plan might be followed as for the length of stay (Article 12), that is to say, that the Convention should state a number to apply in the absence of any number fixed by the neutral Power, and the following provision was adopted as Article 15:

If the neutral Power has not already fixed the maximum number of war-ships belonging to a belligerent which may be in one of its ports or roadsteads simultaneously, this number shall be three.

The question was taken up again in the meeting of September 28. Objections were again expressed with regard to the number three, which no longer corresponds to existing naval organization. A large war-ship is always accompanied by other ships, so that frequently it might happen that a group of ships of one belligerent could not all enter a neutral port. Might not the principle be kept while excepting the case of a *special permission* that might be granted by the neutral Power? Such was the suggestion of his Excellency Mr. TCHARYKOW, who was supported by Admiral SIEGEL. Sir ERNEST SATOW observed that this would be a sorry addition for the neutral. The first delegate of Sweden said also that the neutral Power would thus have a dangerous liberty, but that nevertheless the suggestion of the Russian delegation might be met by not defining so strictly the purport of the rules to be issued by the

¹ See *post*, Third Commission, annex 46.

neutral Government. This Government might fix a maximum number and at the same time reserve the possibility of granting the privilege of entering to a greater number of ships in particular circumstances. A special authorization would therefore presuppose a general provision issued beforehand. The Russian delegation accepted the idea of this amendment, which was opposed by the delegations of Japan and Great Britain as they saw no necessity for changing the draft.

The proposal of Mr. HAMMARSKJÖLD was carried by 9 votes (Germany, Brazil, Denmark, France, Norway, Netherlands, Russia, Sweden, Turkey) against 3 (Great Britain, Japan, Portugal); the United States and Italy did not vote.

[503]

ARTICLE 15

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

The simultaneous presence of ships of war of the two belligerents in a neutral port must be provided for. A custom of long standing has here introduced the so-called rule of twenty-four hours, which it is not proposed to change. The difficulty relates to the order of departure at that interval.

Article 13 of the British proposal¹ confined itself to saying that the neutral Government ought not to permit a war vessel of one belligerent to leave port until twenty-four hours have elapsed since the departure of a war-ship or a merchant ship of the other belligerent. In the committee of examination Sir ERNEST SATOW said that it was for the neutral to settle the order of departure. This is the sense of Article 2*b* of the Japanese proposal.² Article 6 of the Russian proposal³ adopts priority of request.

A Portuguese amendment⁴ has been proposed to the Japanese rule. It was supported by Captain FERRAZ in the meeting of July 27 in the following words: "If the two belligerent ships which are present simultaneously in neutral waters are a merchantman and a ship of war, or a small cruiser or torpedo boat and a large cruiser, the merchantman or the feebler war vessel should leave the port first, whatever may be the order of their entrance into the port. Otherwise the humanitarian end in view, which is to avoid a meeting or a combat, would not be attained. The battleship, going out first, would only have to wait near the port for the issue of the merchantman or the smaller war-ship; the capture or destruction of the latter would be certain and the neutral State would have handed them over." Consequently the Portuguese delegate proposed to word the last phrase of the Japanese article as follows: "It is for the neutral State to decide which of the hostile vessels shall leave first, with the view to prevent, so far as possible, a meeting or combat between these vessels."

There were, then, the following plans before us: (1) the neutral State regulates the order of departure; (2) the priority of request is taken into consideration; (3) the weakest ship leaves first; (4) the order of arrival determines the order of departure.

The last-named plan was finally accepted, and Article 16 as worded below

¹ *Post*, Third Commission, annex 44.

² *Ibid.*, annex 46.

³ *Ibid.*, annex 48.

⁴ *Ibid.*, annex 50.

was carried by 13 votes (Germany, United States, Belgium, Brazil, China, Denmark, Spain, France, Italy, Norway, Russia, Sweden, Turkey) against 3 (Great Britain, Japan, Portugal); Netherlands did not vote.

It was deemed dangerous to have the neutral State settle the order of departure even under guidance. Although the inequality between two vessels of war is very often evident, it may not always be so, and the port authorities might be embarrassed. The rule of order of arrival is very simple, and the neutral will have no difficulty in applying it. It may have to be modified if the ship which enters first is within a case where the legal length of stay is prolonged in its behalf; the ship cannot be deprived of this extension by reason of the obligation to leave first. The twenty-four hour rule is kept as between a war-ship and a merchantman, so that the former cannot leave a port less than twenty-four hours after the departure of the latter; but the converse is [504] not true. Nothing prevents a merchantman flying the flag of one belligerent from leaving a port, if it suits him, less than twenty-four hours after a war-ship of the other belligerent.

There is moreover no period of twenty-four hours prescribed between the departure of two merchantmen.

It was thought possible to do away with the difficulty resulting from the simultaneous presence in a port of two vessels of unequal strength by means of the following provision: "If a belligerent war-ship is preparing to enter a neutral port or roadstead where a war vessel of its adversary is, the local authorities should, as far as possible, warn it of the presence of the hostile vessel."¹ The ship thus warned would decide what to do; if it felt itself weaker than its adversary it could refrain from entering; and if it entered it would know that it could not leave until after the other. This proposal was finally rejected by 8 votes (Germany, United States, China, Spain, Great Britain, Japan, Portugal, Sweden) against 5 (Belgium, Brazil, Denmark, France, Italy), with 4 abstentions (Norway, Netherlands, Russia, Turkey), because it was considered that it would result in a real participation of the neutral in the war.

ARTICLE 16

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

Belligerent war-ships may in neutral ports carry out repairs to render the ships seaworthy but not to add to their fighting force. Article 4 of the Japanese proposal² speaks of repairs absolutely necessary to render the ships seaworthy, and Article 19 of the British proposal³ says that a neutral State ought not to permit the making of repairs in excess of what will be necessary for navigating. It is for the neutral authority to decide what repairs are necessary, and these

¹ *Post*, Third Commission, annex 53.

² *Ibid.*, annex 46.

³ *Ibid.*, annex 44.

repairs must be carried out with the least possible delay. We have here a control allowing the prevention, to a certain degree, of the abuses which have been referred to above in connection with Article 15 and which some desired to get rid of by fixing a maximum term for repairs.

According to Article 19 of the British proposal a neutral State should not knowingly permit a war-ship to repair damage suffered in battle. A Portuguese amendment was to the same effect. This view seems to have been abandoned, as there was a feeling that it would sometimes be difficult to decide on the cause of damage without taking measures that are inquisitorial.

The article mentions only ports and roadsteads. In reply to the question why no mention was made of territorial waters, it was answered that it is probably difficult for ships to carry out repairs in territorial waters, and, besides, control on the part of neutrals over repairs made under such conditions would hardly be possible (session of September 11).

[505]

ARTICLE 17

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

According to the second rule of Washington¹ a neutral Government is bound not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

All were agreed that this rule should be retained, and several proposals include it to a greater or less degree. The only discussion was on the point whether it was necessary to mention territorial waters as well as ports and roadsteads.

The affirmative was adopted by 8 votes (United States, Brazil, Spain, France, Great Britain, Italy, Japan, Turkey); Germany, Denmark, Norway, Netherlands, Russia, and Sweden did not vote. It has been said that a practice forbidden in ports and roadsteads could not be permitted in territorial waters. This is particularly true because the point of view taken is that of what belligerents may not do. The provision is thus justified more easily than that of the Washington rule which speaks of the obligation of the neutral Government.

ARTICLE 18

Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

Article 19 deals with the question which is, with the possible exception of that of the period of stay, the most important in the subject. What quantity of provisions and fuel may be taken on board by belligerent war-ships in neutral ports?

Article 7 of the Russian proposal² says that these ships can provide them-

¹ *Post*, Third Commission, second subcommission, annex A to the fourth meeting.

² *Post*, Third Commission, annex 48.

selves with the food, provisions, stores, coal and repairs necessary for the subsistence of their crews or the continuation of their voyage. Article 17 of the British proposal¹ says that the quantity of stores, food, or fuel taken on board in neutral jurisdiction must in no case exceed that which is necessary to enable the ship to reach the nearest port of its own country. According to Article 4 stood when we consider that, according to the forceful expression of his Excellency of the Japanese proposal² the ships cannot take on any supplies except coal and provisions sufficient with what still remains on board to allow them to reach at the most economical rate of speed the nearest port of their own country or some nearer neutral destination. Finally, Article 5 of the Spanish proposal,³ without mentioning what may be on board, permits belligerent war-ships to provide themselves with the food and coal necessary to reach the nearest port of their country or some nearer neutral port.

[506] We may at the outset dispose of the matter of revictualing except as to fuel. The first rule in Article 19, according to which belligerent ships may only revictual to bring up their supplies to the peace standard, was accepted without difficulty.

The debate bore on coal alone, or rather on fuel, since coal is no longer the only fuel used.

It is now forty years since this question arose, and its importance is underlency Mr. TCHARYKOW, if a man without food is a corpse, a ship without fuel is a derelict. The greatest efforts were put forth in the committee to discover some plan that would be acceptable both to neutrals and belligerents. The latter naturally take into account their geographical situation, which renders it more or less necessary for them to have the opportunity of revictualing in neutral ports; as to neutrals, they can call for a precise rule which they may be in a position to apply without exposing themselves to complaints from the belligerents.

Several proposed solutions were freely discussed and debated with abundant arguments. If the British rule is not accepted, which, as has been observed, is of a nature to beget various difficulties of a practical kind, and if, on the other hand, a system of absolute liberty is not desired, we can frame, and indeed there have been presented, some very different plans for determining the quantity of fuel that may be taken on board by the belligerent vessel; the normal amount, a quantity proportional to displacement or to horse-power, the quantity necessary to travel a certain distance, etc. A technical committee instructed to study this question was not able to arrive at a unanimous answer. The German proposal to grant to belligerents permission to fill all their bunkers was supported by 9 votes (Germany, Brazil, Denmark, France, Italy, Netherlands, Russia, Sweden, Turkey) as against 5 (United States, Spain, Great Britain, Japan, China).

In these circumstances the question was on the second reading submitted to the committee of examination, which had before it the following alternatives:

1. The British proposal,¹ according to which the ships can take on only fuel enough to reach the nearest port of their own country. The meaning of this proposal was clearly defined by Sir ERNEST SATOW in answer to a question

¹ *Post*, Third Commission, annex 44.

² *Ibid.*, annex 46.

³ *Ibid.*, annex 47.

put by Mr. HAGERUP. The rule constitutes a simple means of calculation and creates no obligation for the neutral to watch over the destination of the vessel which asks for the fuel. We allow ourselves to add that it does not imply any obligation on the part of the vessel to proceed to any particular destination. Disputes that sometimes arise would thus be avoided.

2. A proposal that these vessels may only ship sufficient fuel to bring their supplies up to the peace standard.

His Excellency Mr. TCHARYKOW presented as a compromise the following formula: "Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied."

This proposal was adopted by 11 votes (Germany, Brazil, Denmark, Spain, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) with 3 abstentions (United States, Great Britain, Japan), after the proposal made by his

Excellency Mr. TSUDZUKI to omit the whole article had been rejected [507] by 10 votes (Germany, Brazil, Denmark, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) against 4 (United States, Spain, Great Britain, Japan).

Revictualing does not give a right to prolong the lawful length of stay. It is necessary, however, to take into consideration the circumstance that in certain countries a belligerent war-ship cannot obtain coal until twenty-four hours after its arrival was taken into account (Article 249, paragraph 2 of the Italian shipping code).

ARTICLE 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

The revictualing and shipping of fuel does not give the right to prolong the lawful length of stay. However, if, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, this period is extended by twenty-four hours.

A question intimately connected with the preceding one is the question whether a belligerent vessel which has taken on fuel in a neutral port may return within a short time to take on more in the same port or in a neighboring port of the same country. If this might be done, it is easily seen that the neutral port would really be serving as a base of operations. The case was provided for by Article 5, paragraph 2 of the Spanish proposal¹ and Article 18 of the British proposal,² the one viewing it from the neutral, the other from the belligerent standpoint. They do not permit a second revictualing in the same neutral country within three months after the first. This prohibition seemed excessive, and with a view to modifying it the following formula was submitted to the committee of examination: "Belligerent war-ships which have shipped fuel in a neutral port may not replenish their supply *in the same neu-*

¹ *Post*, Third Commission, annex 47.

² *Ibid.*, annex 44.

tral territory until three months afterwards.”¹ It was suggested that this expression was too vague and that it would be better to fix upon some distance.

Some would have liked to leave the neutral Government entirely free, but it was objected that this liberty is dangerous for neutrals who have every advantage in seeing their position precisely defined.

As to the period of three months, which was fixed by Great Britain during the War of Secession and which is arbitrary, it was remarked that as conditions of navigation have changed since that time, when vessels used sails as well as steam, fuel was then not so necessary for them as nowadays, so that the period of three months, although acceptable forty years ago, has become excessive.

It was proposed to the committee to allow a second revictualing under the following conditions of time and distance: “Belligerent war-ships which have shipped fuel in the port of a neutral State may not within the succeeding . . . months replenish their supply in a port of the same State less than . . . miles distant.” The two numbers had been left blank, as the earlier discussions [508] of the committee had not brought any positive result; in the technical committee of which we spoke above, the distance of one thousand miles was accepted by 10 votes to 3.

Finally, the British proposal which forms Article 20 was adopted by 5 votes (United States, Spain, Great Britain, Italy, Japan) against 3 (Germany, Brazil, France). Denmark, Norway, Netherlands, Russia, Sweden, and Turkey did not vote. In view of this vote it cannot be said that we have found a perfect solution.

In the meeting of September 28 his Excellency Mr. TCHARYKOW declared that the Russian delegation would accept the British rule if the latter were presented in its entirety, and he recalled the terms of the instructions given by the Foreign Office in February, 1904: “and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, *without special permission*, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.” The rule is stated in the same terms in the neutrality proclamation of the United States dated October 8, 1870. The delegate of Russia therefore asked that the words *without special permission* be inserted in the article as drafted. This proposal was rejected by 5 votes (United States, Great Britain, Japan, Italy, Portugal) against 4 (Germany, Brazil, France, Russia). There were 5 abstentions (Denmark, Norway, Netherlands, Sweden, Turkey). The delegations of Russia and Germany then made reserves on the subject of Article 20.

Mr. LOUIS RENAULT, as delegate of France, reserved the privilege of submitting to the Commission an amendment in the sense of the resolutions of the technical committee. If the radius of one thousand miles is considered as too little, two thousand or twenty-five hundred miles might be taken. Would not that be a satisfactory compromise?

No proposal was made to the Commission, and the project of the committee was accepted without discussion.

¹ *Post*, Third Commission, annex 55.

ARTICLE 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

Sir ERNEST SATOW proposed to insert after Article 20 the provision contained in Article 16 of the British project:¹ "A neutral Power must not knowingly permit a war-ship of a belligerent lying within its jurisdiction to take on supplies, food, or fuel in order to go to meet the enemy or in order to enter upon operations of war." This text may be compared with Article 5 of the Japanese project:² "Neither belligerent vessels proceeding to the theater of war or sailing in that direction or towards the zone of existing hostilities, nor those whose destination is doubtful or unknown can make repairs or take on coal or supplies in neutral ports or waters." These provisions are designed to be very restrictive, and at the same time are of a nature to impose heavy responsibilities upon neutrals.

The British proposal was rejected by 8 votes (Germany, United States, Denmark, France, Norway, Netherlands, Russia, Sweden) against 3 (Spain, Great Britain, Japan); Brazil, Italy, and Turkey did not vote.

There are different practices with regard to the admittance of prizes into neutral ports. In some countries they are excluded, and in others they may enter on certain conditions. In the committee some contended for a prohibition against entry of prizes, while others simply classed them with war-ships. The former view prevailed. The rule therefore is that in principle a prize cannot be brought into a neutral port; this includes both the case of a prize that is escorted and that of a prize manned by a crew placed on board by the captor. The exceptions include unseaworthiness, stress of weather, want of provisions or of fuel.

As soon as the circumstances which justify its entry are at an end, the prize must leave. A notification is addressed to it if it does not leave of itself, and if it fails to obey, the neutral Power must take measures.

ARTICLE 21

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justify its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

The preceding article deals with the case of a prize which has entered regularly but which does not leave when it should do so. It is also necessary to provide for the case where a prize has been brought in irregularly, that is to say, outside of the exceptions provided.

ARTICLE 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

With a view to render rarer if not to prevent the destruction of prizes, a proposal was made to permit neutral Powers to receive in their ports prizes

¹ *Post*, Third Commission, annex 44.

² *Ibid.*, annex 46.

which may be left there to be sequestered pending the decision of a prize court. The connection of this subject with the destruction of neutral prizes caused the committees of examination of the Third and Fourth Commissions to hold a joint meeting. In the meeting of September 10 Sir ERNEST SATOW, speaking for the British delegation, stated some objections to the proposal. He pointed out that it does not mention the fundamental distinction that exists between enemy prizes and neutral prizes, the former becoming the property of the captor, who may dispose of them at his pleasure and sink them, while the latter must be released as soon as the captor finds himself unable to lead them into one of his ports. It is not certain that the acceptance of the proposal would prevent the destruction of neutral prizes. It will be inconvenient for a neutral to admit the prizes of belligerents into his ports.

The proposal was adopted by 9 votes (Germany, Belgium, Brazil, France, Italy, Netherlands, Russia, Serbia, Sweden) against 2 (Great Britain, Japan), with 5 abstentions (United States, Austria-Hungary, Denmark, Spain, Norway). In the meeting of September 28 several delegations which had previously voted for this article spoke against its retention, and it is possible that its omission will be demanded by the Commission.

There is no question of imposing an obligation upon neutral States, as they are always free to admit or exclude prizes. The article has for its single [510] object to enable a neutral to receive and guard a prize without compromising its neutrality. The neutral State shall take the necessary measures as regards their preservation: it may, if it thinks fit, have the prize taken to another of its ports, a course which may be necessary by reason of the condition of the port into which it was brought or of the presence of other prizes, etc.

The prize court referred to in Article 23 is the *national* prize court; not the *International* Prize Court. Consequently there is nothing to prevent those Powers who do not accept the International Court from voting for this article, as has been said in the committee by the reporter in answer to a question put by Mr. BURLAMAQUI.

ARTICLE 23

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

We may suppose the case of a belligerent war-ship in a neutral port where it is not entitled to remain, either because it has entered in defiance of a prohibition, or, if regularly entered, because it stays longer than permitted. It is incumbent upon the neutral Power to take the necessary measures to disarm the ship; that is, to render it incapable of taking the sea during the war. It is the duty of the commanding officer of the ship to facilitate the execution of such measures.

When a ship is thus detained, what is the position of its officers and crew? We say that they are likewise *detained*, which is a rather vague expression. It has been substituted for *interned*, which seemed to indicate too strictly that the officers and crew should be placed within the neutral country. Their real

position is regulated by a special provision to which we shall return. In law their position is analogous to that of troops of a belligerent who seek refuge in neutral territory, and it has been agreed that the two cases should be controlled by one and the same rule. The regulations annexed to the Convention of July 29, 1899, on the laws and customs of war on land provide for the case in its Article 57: after having said that a neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war, it adds (paragraph 3): "It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission."

Nothing is said with respect to the conditions upon which this permission shall be based. The delegation of Japan had proposed, in order to fill this gap, to say that the men interned could not be liberated or permitted to reenter their own country except with the consent of the enemy. The Second Commission thought it best not to modify the text of the regulations, considering the permission given to one interned to reenter temporarily his own country as too exceptional a case to require regulation in express terms. It added that the

Japanese proposal, conformably to recent precedents, contained a useful [511] suggestion for a neutral State that is desirous of remaining entirely free from responsibility. His Excellency Mr. TSUDZUKI declared himself satisfied with this declaration.¹ In these circumstances, in order to treat the interned belonging to land forces and those belonging to sea forces alike, we should adopt the foregoing ideas and regulate accordingly the position of officers and crews. Doubtless, in principle, a neutral Government, to be free from responsibility, will not permit officers thus detained to return to their own country without being sure of the consent of the other belligerent. But certain exceptional cases may arise where an authorization would be necessary and when there is not sufficient time in which to obtain the consent of the adverse party. An absolute rule must, therefore, be avoided.

There has been a great deal of discussion as to what should be done with the officers and crew. The opinion that prevailed is that all depends upon the circumstances, and that it is necessary to leave it to the neutral to settle the matter. We have therefore mentioned several possible solutions without indicating any preference, as desired by certain delegations which thought that, as a rule, the crew ought to be left on board their ship. There has been accepted, however, an amendment moved by the Italian delegation, according to which a sufficient number of men for looking after the vessel must be left on board. To the objection that there were no analogous provisions in the regulations for land warfare, it was replied that cannon or other arms are not so valuable as ships, which for want of upkeep may easily deteriorate and even become useless. The amendment was carried by 11 votes (Germany, United States, Brazil, Denmark, Spain, France, Italy, Netherlands, Russia, Sweden, Turkey) against 2 (Great Britain, Japan), with 1 abstention (Norway).

Apropos of the cases regulated by this Article 24, there was mentioned the case of a war-ship wishing to put to sea too soon, before the expiration of the twenty-four hours provided by Article 16; no question then arises of disarming the ship but only of preventing its departure, which is easier to do.

¹ See the report of Mr. BOREL on the rights and duties of neutral States on land, vol. i, p. 136 [136].

ARTICLE 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty, on giving their word not to quit the neutral territory without permission.

According to the third rule of Washington,¹ a neutral Government is bound to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

[512] This principle met with no opposition; it was merely sought to find a formula that does not impose upon neutrals too heavy a responsibility in proportion to the means they have at their disposal.

This is the more necessary as we are dealing not only with ports, but also with waters.

The committee adopted an amendment offered by the delegations of Belgium and the Netherlands.

ARTICLE 25

A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above articles occurring in its ports or roadsteads or in its waters.

The delegation of Japan proposed the following: "A neutral State, if it deems it necessary for the better safeguarding of its neutrality, is free to maintain or establish stricter rules than those provided by the present Convention."²

It was asked what would be the need of this article, as the basis of the Convention is the sovereignty of the neutral State. Several articles reserve to the neutral Power the right to lay down more stringent rules, as, for example, Articles 9, 12, 15, and 23. A neutral State has the right to forbid belligerent war-ships access to its ports or to subject such access to such conditions as it deems fit; it can exclude prizes altogether. The one thing required is that the same treatment is to be accorded to both belligerents. The proposal was rejected by 10 votes (Germany, United States, Brazil, Denmark, France, Netherlands, Italy, Russia, Sweden, Turkey) against 3 (China, Great Britain, Japan), with two abstentions (Spain, Norway). At the second reading, his Excellency Mr. TSUDZUKI said that the article proposed by him was necessary in order that the neutral State might remain free to establish more stringent regulations outside the Convention, the conditions stipulated by the Convention being the maximum of what belligerents may demand of neutrals. The first delegate of

¹ *Post*, Third Commission, second subcommission, annex A to the fourth meeting.

² *Post*, Third Commission, annex 58.

Japan, nevertheless, consented to accept the omission of this article with the reserve that Japan will always deem itself entitled to maintain the interpretation just given.

In the meeting of July 30, his Excellency Mr. TCHARYKOW presented the following text as a proper one to be inserted in the draft Convention: "The exercise by a neutral State of the rights laid down in this Convention, within the limits therein indicated, can under no circumstances be considered by one or other belligerent as an unfriendly act."

It was doubted whether this article was needed; but the reply was made that the project itself constituted a wholly new regulation of conduct. Those who sign this Convention will be very desirous of being removed from any complaint. This article had been carried on the first reading by 11 votes to 4. On the second reading it was retained under the reservation of a new wording which was left to the reporter to prepare. Due note should be made that the benefit of the provision applies only to articles accepted by both the Powers between whom the question may arise.

ARTICLE 26

The exercise by a neutral Power of the rights laid down in this Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the articles relating thereto.

[513] His Excellency Mr. TCHARYKOW at the termination of the discussion observed that the project contemplated that a number of laws and proclamations or regulations would be issued by the contracting parties, and that it would be advisable that these be brought to the notice of the Powers. This proposal, supported by the PRESIDENT as an important and necessary addition to the Convention, was approved without opposition in the following form:

ARTICLE 27

The high contracting parties shall communicate to each other in due course all laws, proclamations, and other enactments regulating in their respective countries the status of belligerent ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other contracting parties.

This completes the series of articles that the committee of examination submits for your approval. The committee believes that it contains provisions which conciliate, as far as possible, the interests involved, and that they are of a nature to give these interests the security they need. If this project passes into the domain of international law it will complement the Declaration of the Congress of Paris of April 16, 1856, whose preamble contains the following passage, which we may adopt:

Considering:

That maritime law, in time of war, has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties of States in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point.

The Conference will therefore perform a useful work in diminishing the uncertainty of which the plenipotentiaries assembled at Paris in 1856 complained.

The project is preceded by a preamble designed to indicate the subject of the Convention and the purpose in drawing it up.

As in the Convention of July 29, 1899, on the laws and customs of war on land, it is stated that it has not been possible at present to decide on rules applicable to all circumstances which may in practice occur.

This does not mean that the cases not provided for are left to the arbitrary will of the parties; account must be taken of the general principles of the law of nations. An important observation may be made on this point. In several of the provisions use has been made of the phrase *territorial waters*. What must be understood by that? The committee of examination believed that it could make no determination of a question of so very general a kind.

The Powers should adopt detailed rules regulating the results of their attitude of neutrality, and we have seen that Article 27 of the Convention imposes upon them the duty of communicating the measures thus adopted. We have used the word *enactments*; this is the general expression that allows each Government to adopt the form which best suits its constitutional institutions or its customs; it may be a law, properly so called, an act of the executive, a regulation, etc.

[514] These measures should be applied impartially to both belligerents, and this impartiality requires that in principle they be not altered in the course of the war, because even if the change is not dictated by partiality it balks a natural expectation. It is possible, however, that experience may show to the neutral the necessity of new measures calculated to safeguard its neutrality. The presence of belligerent war-ships in certain ports may be found to cause inconvenience; the neutral State will shorten the length of their stay or even will forbid them to enter. Along this line the first draft preamble only provided for the adoption by neutrals of *more rigorous measures*. It was accordingly criticized on that score; and the present wording was adopted by twelve votes (Germany, United States, Brazil, Denmark, Spain, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) against two (Great Britain, Japan). His Excellency Sir ERNEST SATOW had said that he could not imagine cases where it would be necessary for the neutral to take less rigorous measures; but his Excellency Mr. TCHARYKOW thought the eventuality possible, and accordingly asked for a modification of the text considered by him too restrictive. After the vote, their Excellencies Sir ERNEST SATOW and Mr. TCHARYKOW asked that it should be mentioned that in their opinion cases could not be conceived where a neutral State would be obliged to take *less* rigorous measures in the course of a war for the protection of its rights, whilst the English doctrine had always recognized that neutrals had the right, for this purpose, to lay down more rigorous measures.

This project of the Convention, containing enactments of a general kind regarding war, cannot in any way alter the provisions of special political treaties respecting particular waters.

THIRD COMMISSION
FIRST SUBCOMMISSION

[517]

FIRST MEETING

JUNE 27, 1907

His Excellency Mr. Francis Hagerup presiding.

The meeting opens at 3 o'clock.

The President declares the meeting opened and delivers the following address :

GENTLEMEN : I wish, in the first place, to thank you for the honor you have done me in choosing me to preside over you. That is a task the difficulties of which I cannot hide from myself, but I rely upon your kindness and forbearance in its performance.

The inquiry entrusted to this subcommission is, in many respects, of a rather technical character. On the one hand, it contains questions of a specifically military character : on the other, the principles to be established, and the formulas that must be found for these principles, present, like all questions of law, a distinctly juridical aspect.

In the matter of submarine mines particularly, we are treading a field where the progress of the military science of to-day and the experiences of very recent wars have created international law problems whose solution offers perhaps greater technical difficulties than does any other question with which this Conference will have to deal.

But if the difficulties in our path are of a special and technical character, the object we are aiming at is of universal interest, being the most humanitarian one possible. If, through the joint efforts of military men, jurists and statesmen, we succeed in formulating propositions that can be accepted by the Conference and tend to eliminate or at least lessen for the inhabitants of open towns the horrors of bombardment, and for peaceful navigation the dangers resulting from invisible engines of destruction, we shall have rendered—it is not saying too much—a great service to humanity, and likewise to peace. For, gentlemen, to work for peace means not only to seek the means for peacefully settling international disputes—that is the most obvious side of our labors,—to work [518] for peace also means eliminating, as far as possible, the causes of those disputes—a side of our labors the importance of which is perhaps not duly appreciated by public opinion.

The President goes on to show that the two questions which make up the program of the first subcommission can without inconvenience be examined separately. However, several delegates have expressed a desire to begin with a study of the question of the laying of torpedoes, etc. The examination of the question of the bombardment of ports, towns and villages by a naval force is consequently to be postponed until that of the laying of torpedoes, etc., has been thoroughly gone into ; with the reservation that, should any difficulty arise neces-

sitating its reference to a committee of examination, they should then proceed to the study of the question of the bombardment of ports, etc., etc.

His Excellency Count **Tornielli**, on behalf of the Italian delegation, announces the handing in of a motion relative to the bombardment of ports, etc., etc.¹

His Excellency Mr. **Tcharykow**, on behalf of the Russian delegation, gives notice of the filing of a motion concerning the same subject.²

The **President** requests that those motions be filed as soon as possible; they will be immediately printed and distributed.

He goes on to suggest the adoption, in order to avoid all quibbling when discussing the question of torpedoes, of certain technical terms in regard to which he has consulted the various delegations. He proposes to discard the expression "torpedo," which is generally used to designate only self-propelling torpedoes, and to adopt the word "mine" for the various engines aimed at in the motion filed by the British delegation.³

He thereupon suggests as a method of procedure, that they take as a basis the proposition of the British delegation, to which the other delegations could offer amendments, stating at the same time the reasons for so doing, without, however, entering upon a discussion. This mode of procedure would make it possible to differentiate the various opinions. Owing to the divergency of views, it may be useful later on, as was done by the Second and Fourth Commissions, to issue a *questionnaire*.

His Excellency Count **Tornielli**, on behalf of the Italian delegation, files an amendment⁴ which is equivalent to a preliminary proposition.

Captain **Castiglia** reads a statement of the grounds on which this proposition is based:

GENTLEMEN: The use of mines is a means of defense which can never be renounced, either by great Powers which have a long coast-line to protect, or, with still more reason, by those which, not having a large navy, will find in the use of those weapons a powerful auxiliary for their naval defense.

It is the least costly defense and, for that reason, within reach of all. But when one thinks of the disastrous consequences which these instruments of war may have for the peaceful commerce of neutrals and for fishing, during and even after a war, it is quite natural that one should seek to put a curb on the use of these terrible contrivances in order to eliminate therefrom all fatal consequences.

But the types of mines adopted are so diverse, and the particular instances of their employment so numerous, that, even with the best will, it would be impossible to lay down general rules susceptible of being always faithfully followed.

[519] The ideal undersea defense in the sense of producing no danger to neutral vessels is that which is obtained by obstructions consisting of fixed mines, which are set off electrically by observers. But the use of such mines is not only confined to the neighborhood of shores, but is, moreover, not always practicable.

There are other mines anchored in definite places which explode by contact;

¹ Annex 3.

² Annex 5.

³ Annex 9.

⁴ Annex 10.

others which can be anchored at great depths; still others which in certain circumstances may be the only chance of salvation left to a ship pursued by a stronger foe, and which are set adrift; and finally there are the self-propelling torpedoes which can be shot in various definite directions.

After this summary statement of the diverse kinds of mines, as well as of the instances in which they may be employed, it needs no further demonstration to prove the impossibility of renouncing the use of them in naval war. The only possible and really practicable solution of the problem, which could be easily and universally adopted while, at the same time, respecting the legitimate right of belligerents, as well as the no less legitimate right of neutrals, is found in the adoption of appliances capable of rendering mines harmless on the surface, or assuring their complete immersion by infiltration after a certain lapse of time, as is already the case with self-propelling torpedoes.

On behalf of the Italian delegation I have the honor to submit to the kindly consideration of the subcommission the timeliness of accepting these amendments to the first two articles of the proposition of our colleagues of the English delegation.

Consequently the Italian delegation makes a previous motion.

The **President** asks whether the British delegation wishes to make a statement of the grounds of its proposition.

Captain **Ottley** explains in these words the import of the measure¹ filed in the name of this delegation:

The question of the employment of automatic submarine contact mines, looked at from the point of view of neutral Powers, is one of the most important that can be submitted to the Conference.

Those mines in no way resemble the submarine mines that are touched off from afar by means of electric cables, and which it is customary to use in large numbers for the defense of ports and roadsteads.

To the use, in time of war, of this latter category of mines there can be no reasonable objection on the part of neutral Powers, since the belligerent is always free to render them harmless by cutting the connection with the electric battery on land.

But of late we have witnessed the extension of the practice of using in war an automatic submarine contact mine of a wholly different type, capable of being strewn rapidly in large numbers, and of such nature that, once the mine has disappeared under the surface of the water, it preserves for an indefinite period its dangerous character, while, at the same time, the belligerent Power no longer has any means of controlling it.

The interests of humanity require from all nations a thorough study of the problem with a view to determining to what extent it would be possible to safeguard the life and the interests of neutrals and non-combatants, while avoiding the undue circumscription of the rights of belligerents.

[520] It is admitted that the use, in time of war, of automatic contact mines can give rise to no objection on the part of neutrals, as long as those mines are placed only in the territorial waters of belligerents, or in the waters over which one of the belligerents exercises effective power. But this principle once laid down, it is none the less true that it would be desirable to prevent absolutely those mines from being laid outside the aforesaid limits.

¹ Annex 9.

Human conscience, gentlemen, could not tolerate the idea that a belligerent should be permitted to sow such mines profusely in seas frequented by the world's merchant marines: but international law does not at present prohibit such acts, and it is to be feared that, long after the conclusion of peace, neutral vessels navigating the seas far from the scene of war will be exposed to terrible catastrophes.

Mines of this nature constitute a continual danger for ships of all nations. The scene of the recent war in the Far East was, luckily, far from the frequented path. Had the ships passing at a distance of twenty miles off Port Arthur been at all comparable in number to those which ply the waters near the entrance of the Baltic Sea, the Dardanelles, the Strait of Gibraltar or the Straits of Dover, a series of catastrophes would have occurred that would have riveted the attention of the civilized world to the question.

Can it be seriously maintained, be the exigencies of the moment what they may, that a belligerent is entitled to use a war engine of such a nature that, long after the ending of hostilities, it can cause the total loss of a ship belonging to the merchant marine of a neutral State, freighted, perhaps, with a thousand innocent lives?

During the recent war in the Far East such mines were strewn in large quantities in the environs of a fortified harbor by both belligerents, and this, not only within the boundaries of their territorial waters, but as far out as their guns could carry.

It belongs to the Conference to decide whether, in imposing restrictions to the use of such mines, it is desirable to stipulate that, while as a general rule it shall not be permissible to use them outside the boundaries of a belligerent's territorial waters, it will be permissible to lay them to the outermost limit of effective gun range in the vicinity of a fortified harbor.

If this principle were adopted, it would then be desirable that the Conference should specify within what limits it shall be permissible to lay such mines, using as a basis of its decision the effective range of modern guns, and reserve for future Conferences a right of revision in this respect.

Deeply impressed with the sentiments I have just expressed, gentlemen, and convinced of the importance of the question from the standpoint of the interests of neutrals, our Government has charged us to submit for the consideration of the Conference the draft rules which the British delegation has already had the honor of filing.

His Excellency Mr. **Keiroku Tsudzuki** declares that the Japanese delegation concurs in the proposition filed by the British delegation, with the exception of Article 1.

Convinced that it would be possible to manufacture mines which, after having been submerged, for a given time become entirely harmless, the Japanese delegation does not deem it unreasonable to propose that a belligerent should have the right to employ, during engagements, unanchored automatic submarine contact mines, which, after a certain limited time, become completely ineffective and which, in consequence, offer no danger whatever to neutral vessels outside the immediate zone of hostilities.

The amendment proposed in Article 1 would, therefore, be worded as follows.¹

¹ Annex 11.

[521] His Excellency Vice Admiral Jonkheer Röell declares that the Netherland delegation fully adheres to the fundamental principles of the British draft. It proposes, however, a certain number of changes in the shape of amendments as follows:¹

These amendments are explained by the following considerations:

The Netherland delegation has but two objections to offer to the British proposition:

The first is that it contains no provision regulating mine-laying, during war, by neutral Powers, in their territorial waters, to enforce neutrality.

The second objection is occasioned by the second paragraph of Article 4, wherein are set out the *desiderata* relative to a military port. Confining itself to its own military ports, the delegation calls the Commission's attention to the fact that graving-docks and construction and repair yards are often located in an inland commercial port, for which the fortified port serves as a seaport. Furthermore, it cannot understand the use or necessity of requiring that those dockyards be operated by the State. It seems to it that the denomination mentioned in the first paragraph of Article 4, namely, that of "fortified military ports" means ports protected by permanent coast fortifications, sufficiently answers the purpose in view.

Finally the delegation expresses a desire to cooperate in the drawing up of a formula regulating the amount of indemnity to be paid for loss of life and material caused by the lack of precautionary measures on the part of Governments laying mines; but it cannot blink the fact that it will be extremely difficult to find a satisfactory solution. Nevertheless it assumes that some theoretical rule is needed for the aforesaid regulation and it proposes an Article 7 worded as follows:

The loss of non-hostile personnel or material caused by the placing of mines outside of notified regions must be compensated for by the Government that laid them.

On behalf of the Brazilian delegation, Captain Burlamaqui de Moura makes the following declaration:

In this question of submarine mines, the Brazilian delegation, in consideration of the geographical configuration of countries having a very extended coast-line and a large number of harbors scattered along said coast-line, would like to see a special provision² added to the British draft.

The President, in view of the number and diversity of amendments filed, is inclined to adjourn the discussion to a future meeting.

His Excellency Count Tornielli is anxious to state that the Italian motion concurs entirely with the considerations set forth by the British naval delegate with respect to the humanitarian sentiments expressed and the interests of neutrals.

The meeting is closed at 3:45 o'clock.

¹ Annex 12.

² Annex 13.

SECOND MEETING

JULY 4, 1907

His Excellency Mr. Francis Hagerup presiding.

The meeting comes to order at 3 o'clock.

The minutes of the first meeting are accepted.

Annexes 12, 5, 15, 3, 14, 2 and 4 have been printed and distributed among the delegates.

The President sums up in these words the work that devolves upon the subcommission in accordance with the British proposition and the various amendments filed.¹

GENTLEMEN: The questions we shall have to deal with are the following:

First question: Should not certain kinds of mines be the object of an *absolute* prohibition, whether they be laid in territorial waters or in the open sea?

The British proposition prohibits:

(a) Unanchored automatic submarine contact mines; the Italian and Japanese amendments² make an exception for such mines as become harmless a certain time after their immersion. The Italian amendment fixes that time at one hour, while the Japanese amendment indicates no fixed time.

(b) According to the British proposition, mines which on leaving their mooring-place do not become harmless are likewise forbidden. The same prohibition is contained, though in other terms, in the Italian and Spanish amendments.³ The difference between this latter amendment and the aforesaid provisions is that the Spanish amendment presupposes a sort of international authorization for laying automatic contact mines.

Second question: Should not the laying of submarine mines *in the open sea* be prohibited?

The English proposition, Article 4, replies affirmatively, with the reservation that it sanctions mine-laying at sea to a distance of ten miles in front [523] of certain fortified ports. The proposition further contains a definition of what is meant by a military port. The amendment of the Netherland delegation proposes to strike out that definition.

Third question: Upon what conditions may States lay mines in their *territorial waters*?

This question is dealt with by the British proposition in so far only as it concerns belligerents, while the amendments proposed by the Netherland and Brazilian delegations are also aimed at neutrals. The British proposition in its Articles 4-6 prescribes in a general way the precautions that must be taken in

¹ Annex 9.

² Annexes 10 and 11.

³ Annexes 10 and 14.

order to safeguard peaceful navigation against mine dangers. On this point, there is this difference between the British proposition and the Netherland amendment, that the former requires belligerents to give neutrals special notice of the laying of mines, whereas the Netherland amendment is satisfied with a general proclamation to that effect. The proposition of the Netherland delegation, which deals likewise with neutrals, contains, besides, the same mine-laying rules for both neutrals and belligerents. It is further to be observed that this proposition subjects all mine-laying, whether by belligerents or by neutrals, to the restriction that straits joining two open seas shall not be barred. As for the remaining provisions proposed by the various delegations, it is proper to consider separately the following diverse hypotheses:

a) Laying of mines by a belligerent in his *own* territorial waters;

b) Laying of mines by a belligerent in the waters of his *adversary*. The Spanish amendment¹ subjects it to the proviso that the belligerent exercise effective control therein. The British proposition (Article 3) on its side prescribes that the use of mines to establish or maintain a blockade is prohibited.

c) Laying of mines in the territorial waters of *neutrals*. The Netherland amendment assimilates this case entirely to mine-laying by belligerents, while the Brazilian amendment² appears to permit neutrals only to lay mines which are exploded in the fullness of knowledge by the State authorities. This amendment contains, moreover, special prescriptions as to the warning to be given and as to the responsibility incurred when mines are displaced.

The fourth question is that aimed at by Article 7 of the Netherland amendment.³ Is it expedient to establish by an international convention rules for *indemnification* in case of damage caused by mines?

These explanations made his Excellency Count **Tornielli** take the floor and points out that the Italian amendment bears exclusively upon Articles 1 and 2 of the British proposition and has, therefore, the character of a previous motion.

After an exchange of explanations between Brigadier General **de Robilant** and the **President**, on the connection existing between the Italian motion and the principle raised by Article 1 of the British proposition, his Excellency Mr. **Hagerup** proposes that they proceed to the examination on first reading of the British proposition and of the amendments filed, confining themselves to the questions of principles without investigating details nor seeking here and now appropriate formulas: This task would devolve upon a committee of examination which would come to an understanding with the technical delegates.

Commander **Burlamaqui de Moura**, on behalf of the delegation from Brazil, lays before the commission the following considerations intended to explain the draft² which he had the honor of filing at the previous meeting.

[524] The Brazilian delegation having presented for examination by the Conference a proposition for the international regulation of the use of submarine mines, has had the satisfaction of ascertaining that his manner of looking at so important a subject was in perfect harmony with the other modifications proposed to the plan of the British delegation, which has formed the basis of the preliminary discussion of the question.

In fact, in considering the hypothesis of the employment of submarine

¹ Annex 14.

² Annex 13.

³ Annex 12.

mines in the territorial waters of a neutral State, a use intended to insure a better guaranty of its neutrality, and such as it is agreed to sanction nowadays, Brazil had naught else in view than to complete the intent of the plan which, in its general lines, admits the possibility of this measure.

The plan absolutely forbids the use of submarine contact mines which, originally made fast, do not stay anchored; nor does it permit the use of such as, from any cause whatsoever, are dragged far from their moorings and do not become entirely harmless.

With these provisos the project allows belligerents the use of this sort of mines, which they can then employ in their territorial waters, and it even concerns itself with defining the limits within which this privilege is admitted; that is to say, the plan solves at one stroke one of the problems the absence of a solution of which has already caused so many complications to the commerce of neutrals and was still likely to cause such great injuries to their interests.

But in none of its provisions does it refer in a clear manner to the bringing into use by neutral States of mines in their territorial waters with a view to preventing breaches of neutrality by any of the belligerents, an indispensable condition of the former's existence.

Yet this side of the question is of too much importance for the English propositions to be wholly acceptable, because if neutrals must in one form or another feel the effects of military operations, whatever can be done to circumscribe the field of such operations will be of great benefit to neutrals. A considerable number of English and American internationalists have been seeking ways of making such limitation practical; one of the most distinguished among these, the eminent Professor HERSHEY, member of one of the best known American universities, even maintains that a neutral State may make use of mines in its harbors and territorial waters, provided a general or special notice, according to the then prevailing circumstances, be given to all, announcing the fact that mines have been laid.

The Institute of International Law, at one of its meetings last year, without having come to a definite decision on this question, in a first deliberation acknowledged that these mines might be employed in the above-mentioned circumstances, while nevertheless prohibiting their use in straits joining two open seas.

On that occasion, the members of the International Institute invoked most weighty considerations, in favor of specifically guaranteeing the primordial right of self-preservation, which must be recognized to all sovereign States, however feeble their means of defending the inviolability of their independence. Vice Admiral RÖELL who in this Commission has specified with remarkable skill, on behalf of the Netherland delegation, what should be understood by floating mines, has clearly shown that it is no longer possible to deny to a neutral State the right of defending its existence in this fashion: he applied himself besides, in concert with Mr. POLITIS, to the question of the indemnity to be granted to craft which, by accident, fall a victim to one of those mines because of a lack of security in the devices used.

[525] We are wholly of the opinion that neutral States ought not to be permitted to use submarine mines in the channel straits leading from one open sea to another; just as we believe that these States are in duty bound to pay indemnity for all damage caused to another State, as a result of a lack of security in the use of the apparatus.

In this latter case, we venture the opinion that the appraisalment of the damages ought to be made through the usual legal processes; in case of disagreement, we think that the fixing of the indemnity should be done by the Permanent Court of Arbitration, with which the interested States should, within six months after the accident, file all documents necessary to the defense of their rights. Payment of indemnity should take place three months after the arbitral court shall have decreed its award.

The **President** remarks that the question raised by the Brazilian delegation does not seem to have any connection with the articles of the British proposition to be discussed to-day; he then points out the first question submitted to the Commission for examination: Ought certain types of mines to be the object of an absolute prohibition?

He reads Article 1 of the British proposition,¹ the Italian motion,² the Japanese³ and Spanish⁴ amendments; he announces in this connection that after an understanding with the English naval delegate, the latter agrees to substitute the words "*non amarrées*" (unanchored) for the words "*non mouillées*" (unmoored).

Rear Admiral **Arago** makes a suggestion to which, moreover, he reserves the right to come back later, relative to adopting the term "drifting mines" for all mines not fixed with respect to the bottom.

Captain **Castiglia** sets forth the following considerations respecting the distinction made by the British proposition between anchored and unanchored mines that happen to go adrift.

GENTLEMEN: After the declaration which in the name of the Italian delegation I had the honor of submitting to your kind attention at the meeting of June 27, in connection with Article 1 of the English proposition, I shall only take advantage of your patience to add some further considerations of general interest. Aside from that interest, which, however, must have great weight in the decision you will make, it seems to me that it would not be possible to set any bounds to the progress which science continually brings into the development and use of war engines, especially when that progress has the double object of perfecting means of defense and, while keeping in view humanitarian interests, of rendering the weapons employed harmless for neutrals.

If one examines the first two articles of the English proposition, one cannot form an exact idea of the reasons why there should be any objection to extending to unanchored automatic contact mines the rule set down in Article 2 for anchored contact mines which would become harmless on leaving their moorings. If I am not mistaken in believing that the former become equally harmless, one hour at the most, after being dropped, no reason whatever should prevent the authorization of their employment.

It should further be remembered that it is precisely unanchored mines to which I alluded when mentioning those which, in certain cases, may represent the sole chance of safety left to a ship pursued by a stronger foe.

[526] How could a Government renounce so efficacious a means of guaranteeing the safety of its ships when that means is no more dangerous than any other for the neutrals?

¹ Annex 9.

² Annex 10.

³ Annex 11.

⁴ Annex 14.

In giving up the employment of that means, would they not, in many instances, uselessly endanger the existence of their ships and crews?

Would not a Government acting in this fashion be betraying the highest interests of its country's protection?

On the other hand, if it has the assurance that the mines used by its seamen will become harmless after a brief period of time which can be automatically regulated, a period of time which, in any case, should not exceed one hour from their launching, would it be fair to forbid it to employ them?

True, it might be objected that in the present state of safety appliances of submarine mines, whether anchored or free, one cannot be absolutely sure that they will become harmless, the former upon breaking their moorings, the latter a little while after they have been launched. Now, if all automatic torpedoes, actually in use in all the navies in the world, are provided with an immersion valve functioning with regularity, nothing is easier than to apply a like device to unanchored contact mines.

If we reflect, on the other hand, that for anchored mines, the appliance that is to make them harmless after the breaking of their cables, is not generally known, and that, nevertheless, it is proposed to authorize the employment of these mines conditioned upon this appliance, it is not understood why the same concession should not also be made for unanchored mines.

There is no question of permitting an unconditional use of these mines; it is merely proposed that you sanction them on the same condition as the others.

I deem it useless to attempt further to influence your opinion. What you have been good enough to let me say, proves sufficiently, I hope, the general interest of the question which the Italian delegation believes it has interpreted by the amendments which it has had the honor of laying before you.

The **President** points out that it follows from the declarations which the subcommission has just heard, that it is expedient to discuss Articles 1 and 2 of the British proposition simultaneously.

Captain Ottley declares that as far as Article 1 is concerned, his Government will not oppose the employment of drifting, that is, unanchored, mines on condition that they be provided with appliances making them harmless after a very limited period of time.

As to Article 2, it is in perfect harmony with the ideas set forth by the Italian naval delegate.

His Excellency Count **Tornielli** thanks the British naval delegate for this declaration and asserts that the two types of mines (anchored and unanchored) are thus put on an equal footing.

Captain Chacón observes that there would also exist a certain necessity for imposing a check upon the employment of unanchored mines.

His Excellency Mr. **Tcharykow** declares, on behalf of the Russian delegation, that in inserting in its program the question of submarine mines, the Imperial Government had in mind the interests of peaceful shipping. He is, therefore,

very anxious to draw the Commission's attention to the need of [527] establishing that security. It is consequently expedient, on the one hand, to go to the bottom of the technical side of the question and, that done, to grant, on the other, a certain delay to the Governments for putting the perfected appliances into use.

His Excellency Mr. **Léon Bourgeois** asks to be set right on the question

whether the upshot of the explanations exchanged above is complete assimilation of anchored and unanchored mines, since in fact both must be provided with the same special appliance.

Captain **Ottley** here draws a distinction between unanchored or drifting mines, which in the opinion of the British Government should sink in a very short while (5 or 10 minutes) and anchored mines, which it is not possible to say will become harmless after a definite period of time. He recalls to mind that unanchored mines might be laid everywhere, while the use of anchored mines would be allowed only in territorial waters.

His Excellency Vice Admiral Jonkheer **Röell** observes that anchored mines which break loose must immediately become harmless.

The **President**, after having read Article 3 of the British proposition, proposes to reserve it; the blockade question being submitted to another Commission, it would, as a consequence, be necessary to confer with it in regard thereto.

His Excellency Count **Tornielli** brings out the fact that the Fourth Commission occupies itself with the conditions of blockade whereas the Third ought to confine itself to inquiring whether the employment of mines as a weapon, in case of a blockade, can be permitted.

The **President** acknowledges the truth of this observation; whereupon, at the suggestion of Sir **ERNEST SATOW**, it is agreed that the Fourth Commission shall be advised of the connection between the two questions.

The **President** reads Article 4 of the British proposal and proposes that they examine the first paragraph while reserving the question of the definition of a military port (paragraph 2).

His Excellency Count **Tornielli**, agreeing with Captain **OTTLEY**, finds that by reason of the exchange of views had in regard to Articles 1 and 2 it is advisable to add the word *anchored* before *automatic submarine contact mines*.

Rear Admiral **Siegel** then expounds the reasons why the German delegation cannot adhere to the restriction prescribed in Article 4. In his opinion belligerents ought to be permitted to place mines also in the war zone; the sea area in which there occurs or has just occurred a naval engagement, or in which such an operation is likely to take place by reason of the presence or the approach of the naval forces of the two belligerents, shall be considered as a war zone.

The German and English naval delegates here engage in mutual explanations about the naval war zone idea.

His Excellency Vice Admiral Jonkheer **Röell** suggests that they suppress the words "*to neutrals*" after the words "*to give notice thereof*," for it is proper to safeguard even the merchantmen belonging to the belligerents, and consequently there is good reason for setting up the obligation of giving a general notice.

His Excellency Mr. **van den Heuvel** suggests that they replace the words "territorial waters" by a more precise definition, since the belt of territorial waters varies in width according to the different States.

[528] Captain **Ottley** declares that he understands by territorial waters, according to international usage, the zone extending to three nautical miles from the coast.

The **President** remarks that it will be well also to occupy themselves with the fixation of that zone for coasts presenting sinuosities.

Captain Ottley replies that, in his opinion, seas into which the opening is less than ten nautical miles wide ought to be regarded as territorial waters.

His Excellency Count Tornielli observes that the question of principle of territorial waters appears to exceed the competency of the subcommission.

His Excellency Mr. van den Heuvel explains that he had by no means proposed to determine theoretically the extent of territorial waters, or to give a definition which would find application in and form precedents for numerous juridical matters, but that he merely suggests they state exactly the zone in which belligerents may uniformly make use of automatic submarine contact mines.

With regard to the second paragraph of Article 4 of the British proposition, his Excellency Vice Admiral Röell observes that the definition in that paragraph would exclude nearly all Dutch military ports, as they do not answer its requirements and contain, for instance, no shipyards belonging to the State.

His Excellency Count Tornielli remarks that the British proposition appears to be lacking in clearness and precision. First it speaks of fortified military harbors and afterwards of other harbors that are considered as military harbors because they possess a naval arsenal. On this head it behooves us to take into consideration three facts quite distinct from each other, to wit:

1. The case of fortified military ports possessing a naval arsenal such as described in the British proposition;

2. The case of fortified military ports not possessing such a naval arsenal; and

3. The case of ports possessing the naval arsenal but minus fortifications

It is necessary to know, so that it can be debated, whether it is for all these three classes of harbors or only for some of them that the British proposition wishes to set up the right of defense by anchored automatic contact mines to the distance of ten miles from the land batteries. In order to dissipate all possibility of a misunderstanding an explanation appears indispensable.

Thereupon there takes place an exchange of views among the President, Count Tornielli, Captain Ottley and Rear Admiral Siegel, after which the President decides that the second paragraph of Article 4 has for its object to restrict as much as possible the employment of mines, and that *only those ports which first are fortified and secondly possess at least a large graving-dock and are equipped with the apparatus necessary for construction and repair of war vessels, etc.*, may extend the mine-laying zone to ten miles from the land batteries.

The President then reads Articles 5 and 6 of the British proposition to which there is an amendment of the Netherland delegation¹ which proposes to expunge the word "neutrals" in the second line of Article 5.

[529] His Excellency Vice Admiral Jonkheer Röell refers at this juncture to what he has already explained in connection with paragraph 1 of Article 4.

The President reserves debate on Articles 5 and 6, as well as on the Netherland amendment. He then proceeds to the discussion of the precautions to be taken in mine-laying.

Lieutenant Commander of the Navy Ivens Ferraz observes that it is very difficult to define the precautions needed for safeguarding neutral vessels. He proposes to replace the words "necessary precautions" by "possible precautions."

¹ Annex 12.

Captain **Ottley** says that his Government will not object to this slight modification.

His Excellency Mr. **Hammarskjöld** observes that the purpose of the Netherland amendment is not to require that it be pointed out in a precise manner where the mines have been laid, but to prescribe that a general notice be given in regard thereto. Inasmuch as anchored mines may, in certain cases, be laid outside territorial waters, it should be made obligatory for a State (question 6) to remove the mines which might happen to be not only in its territorial waters, but also outside these waters, along its shores.

The **President**, after consulting several delegates as to the expediency of passing to the examination of the amendment filed by the Spanish delegation, closes the meeting on account of the lateness of the hour and convokes the first subcommission for next Thursday the 11th instant at 3 o'clock.

The meeting is closed at 4:10 o'clock.

[530]

THIRD MEETING

JULY 11, 1907

His Excellency Mr. Francis Hagerup presiding.

The meeting is opened at 3 o'clock.

The President asks if there are any remarks to be made about the minutes that have been distributed. He has received some requests for correction. These will be recorded in the minutes which will thereupon be considered as accepted.

The PRESIDENT recalls where the discussion had been left at the last meeting. The amendments that still remain to be debated are the following:

1. The Spanish amendment¹ which subjects the laying of mines by a belligerent in the territorial waters of the enemy to the condition that the belligerent exercises effective control in these waters.

2. The Netherland amendment² concerning the prohibition of the laying of mines in straits uniting two open seas.

3. Article 3 of the British proposition³ forbidding the use of mines for commercial blockade.

4. The Netherland and Brazilian amendments⁴ relative to the laying of mines by neutrals.

5. The Netherland amendment² respecting damages.

The PRESIDENT consequently reads the Spanish amendment to Article 4 of the British proposition which is of the following tenor: "*Belligerents can make use of submarine contact mines only in their territorial waters or in those of their enemies when they exercise effective control over them.*"

He then asks whether anybody desires to speak on that amendment.

His Excellency General Porter reads a proposition he has had the honor to file on behalf of the delegation from the United States of America, relative to the employment of automatic submarine contact mines.⁵

The President records the filing of this proposition, which will be printed and distributed. He observes that it is of a general nature and is not connected exclusively with the question now under discussion.

[531] His Excellency Vice Admiral Jonkheer Röell then makes the following remarks about the Spanish amendment:

That proposition has two aims: the first, expressed in Article 2, relates to the prohibition against mine-laying before an international commission has recognized the efficacy of the means intended to render them innocuous in certain

¹ Annex 14.

² Annex 12.

³ Annex 9.

⁴ Annexes 12 and 13.

⁵ Annex 17.

cases; the second is to make mine-laying in the enemy's territorial waters conditional upon the exercising of effective control over the zone where it is intended to lay the mines.

In regard to the first point I make bold to observe at once that there certainly exist means practically sure to render innocuous such anchored automatic mines as might leave their mooring.

The mines in use with us become harmless the moment they come to the surface the same as torpedoes become harmless on reaching the end of their course.

There, naturally, occur, in the employment of either kind, certain irregularities in the functioning of the mechanism; but experiments have demonstrated that in the case of mines laid in very unfavorable places these irregularities never exceed 2 per cent. of the trials. Wherefore the condition stipulated by the Spanish proposition is not needed; without taking into account that the various States do not seem favorably disposed toward the idea of instituting an international commission to investigate their war engines.

As to the second point, it seems to me that the principle could not be accepted.

The object of a naval war is to inflict as much damage as possible on enemy ships in order to end the war as quickly as possible.

One of the chief means is to impede the movements of enemy ships, for instance, to prevent them by means of mines, from leaving port and thereby *ipso facto* to give greater freedom of action to one's own craft.

If we restrict mine-laying to the maritime zones where effective control is exercised, we shall certainly harm offensive operations in the theater of war, but we shall also go beyond the purpose of the Spanish proposal which merely aims at safeguarding neutral vessels, without, however, impeding the operations of belligerents.

As no one asks to be heard on the Spanish amendment, the **President** reads the Netherland amendment relative to the laying of mines in straits.

His Excellency Mr. **Keiroku Tsudzuki** thinks it his duty to remark, on behalf of the Japanese delegation, that the last paragraph of the Netherland amendment¹ to Article 4 of the British proposition appears to him to be perhaps adaptable to the geographic conditions of continental States but not always to those of insular Powers. Owing to Japan's peculiar configuration, the numerous straits separating its islands, straits that form an integral part of its territory, but which none the less come within the definition written into the said amendment, the Japanese delegation cannot adhere to that provision.

The **President** asks if Vice Admiral RÖELL will kindly specify the meaning of his amendment. Is its intent absolutely to prohibit mine-laying in straits, or does it permit this on condition that freedom of passage be assured for peaceful shipping?

His Excellency Vice Admiral Jonkheer Rœell answers that the amendment merely has in view the right that ought to be reserved for neutrals to pass through the straits where belligerents might have laid mines. Straits ought not to be entirely barred.

[532] The **President** remarks that in view of these explanations it would be necessary to modify the text of the amendment; this task would be re-

¹ Annex 12.

served for the committee of examination. He then asks whether the first delegate from Japan, after the declarations he has just heard, changes his opinion.

His Excellency Mr. **Keiroku Tsudzuki** declares that he does not object to the amendment if the restriction which it prescribes applies solely, as has just been pointed out by the **PRESIDENT**, to neutral countries which lay mines in order to protect their coasts, and if, furthermore, it has no other purpose than to insure freedom of peaceful navigation by allowing passage through the waters where neutrals might have laid mines.

The **President** goes on to the third question and reads Article 3 of the British draft which proposes to forbid the use of automatic submarine mines for the purpose of establishing or maintaining a commercial blockade.

Rear Admiral **Arago** observes that the outcome of the debates of the previous meeting appeared to be that the examination of this question was to be reserved until after an understanding had been reached with the Fourth Commission.

The **President** replies that he has already talked the matter over with the president of the said Commission with a view to an eventual understanding about it. It appears to him that there is no impropriety whatever in discussing here the question of the eventual employment of mines to establish and maintain a blockade, which is a specific question within the province of the Third Commission.

Rear Admiral **Arago** remarks that it would at all events be necessary to determine the exact bearing of the article in question; does it, for instance, forbid belligerents establishing a blockade all use of submarine mines, even for their own defense, or, on the contrary, is it the sole aim to prohibit the establishing of a blockade with the aid of a string of submarine mines laid in front of an enemy coast? Is there a question of obligatory removal of the mines on lifting the blockade?

Captain **Ottley** declares that the idea which inspired the article was undoubtedly to forbid the shutting off of access to a great commercial port by the exclusive use of a string of mines.

The **President** states that they are facing two questions: First, may boats establishing or enforcing a blockade employ mines for their personal defense? Secondly, may a commercial blockade be established solely with the help of mines? Everybody appears to concur in answering the second question negatively.

His Excellency Count **Tornielli** remarks that the Third Commission does not have to examine whether and when a blockade may be established. He thinks that no one dreams of discussing the principle that a blockade must be effective. The question is to know by what means it may be established or maintained.

The aim of the British proposition is to prohibit the use of submarine mines for maintaining the effectiveness of the blockade when it is not, strictly speaking, a military operation but simply a means of making commerce impossible. He believes there is unanimity in the subcommission for giving that interpretation to the English proposition.

The **President** points out that in fact there appears to be unanimous consent on this point; it will nevertheless be necessary to be specific; this will be the work of the committee of examination.

[533] He then proceeds to the fourth question, relative to mine-laying by

neutrals, and reads the Netherland and Brazilian amendments. He asks Commander BURLAMAQUI whether the amendment presented by the Brazilian delegation aims at prohibiting the employment by neutrals of automatic contact mines.

Commander Burlamaqui de Moura explains that, according to his amendment, only the use of submarine mines exploded by the authorities of a State, ought to be permitted to neutral States.

The President states that there is a discrepancy between the Netherland amendment and the Brazilian; the former assimilates belligerents to neutrals, while the Brazilian amendment absolutely forbids neutrals the use of automatic submarine contact mines.

His Excellency Count Tornielli observes that there is no occasion for occupying oneself with the mines spoken of by the delegate from Brazil. Those mines can only be exploded by the electric current controlled by the hand of the person on land. As soon as the electric wire is broken, those mines become wholly harmless: they may be abandoned at sea without any danger whatsoever to anyone.

Captain Burlamaqui de Moura says that the Brazilian delegation, however, reserves the right of returning to the question of the employment of automatic contact mines by belligerents when it shall be investigated later.

The President reads Article 7 of the amendment proposed by the delegation from the Netherlands.¹

His Excellency Rear Admiral Jonkheer Röell explains in the following terms the grounds of that amendment:

As I have already had the honor of remarking at the meeting of June 27, the addition of that article (Article 7) has no other object than to proclaim this principle that the State at fault is responsible for the loss of human lives and of goods resulting from the displacement of automatic submarine contact mines moored outside notified zones. In view of the difficulty of formulating a general rule for a multitude of very diverse cases, I endorse the opinion so lucidly set forth by Commander BURLAMAQUI in his remarkable speech at the previous meeting. I fully concur with him in proposing that the fixing of the indemnity for all damage be entrusted to a joint commission of the States concerned and, in case of disagreement, to the Permanent Court of Arbitration.

I now have to remark in addition that, as a result of the propositions made in favor of recognizing to belligerents the right to lay unanchored mines on the high seas, the question of indemnity takes an unforeseen turn. It is necessary, at the least, that the length of time during which the unanchored mine remains harmful be restricted to a minimum which shall not exceed the limit indispensable to the safety of peaceful navigation; it is then the exigencies of the security of navigation in frequented seas which would serve as a basis and it seems to me that the limit of ten minutes, argued by the British naval delegate, my eminent colleague Mr. OTTLEY (a limit that already exceeds the time required by a self-propelling torpedo to sink by the action of the immersion valve) could serve as a compromise between the opposite parties in this matter.

[534] Finally, I believe that a simple sketch of the laying of unanchored mines

¹ Annex 12.

in a frequented sea would show us the imminent danger likely to result for non-belligerent ships, from a prolongation of the ten-minute limitation.

His Excellency Count Tornielli declares that he will not raise his voice against the principle of natural right that he who causes an unwarranted damage ought to make it good. But he observes that from the discussion which took place at the previous meetings, it follows that mines may be employed in territorial waters and within certain areas around the scenes of hostilities, both for defense and attack. If, unfortunately, a merchantman comes upon one of those mines and the latter explodes, there will be no way whatever of verifying to whom that mine belonged. Which, then, the assailant or the one who is on the defensive, is to bear the responsibility for the injuries inflicted? You can, if you wish, insert the clause desired by the Netherland delegate; but it must be confessed that it is scarcely possible to imagine any instances where this clause will find practical application.

His Excellency Vice Admiral Jonkheer Röell acknowledges the justness of the observation presented by Count Tornielli, and points out that he is anxious above all things to see the principle laid down in the Netherland amendment adopted.

The President thereupon declares the first reading ended and asks whether anyone wishes to speak on the propositions or the amendments as a whole.

Mr. Louis Renault speaks as follows:

The various propositions about submarine mines submitted to this sub-commission raise questions of a purely technical nature, into the discussion of which, as you well know, I have no intention of entering, that being wholly outside my sphere. But the solution of these questions seems to be dominated by certain principles of a general order which even a jurist may claim the right to formulate. That explains and excuses my intervention.

The draft of the British delegation, like the amendments filed by other delegations, takes its inspiration from this general idea that, while respecting the belligerent's right to utilize all engines which he thinks calculated to increase his offensive and defensive power, it is important to reduce as much as possible the danger resulting therefrom to neutrals.

It is in this direction that automatic submarine contact mines have especially attracted the attention of the public, owing to the fact that, in their present state of development, as soon as they are anchored they evade the guiding hand of man and are, as a consequence, liable to strike blindly, friends, foes and neutrals alike.

The propositions now before the Commission are much alike in their general outlines and it is consequently enough to disengage the general principles on which they are based.

The first sets up for belligerents the right to employ mines in the waters that wash their shores, with the two-fold proviso that the engines shall be made fast to the bottom and that, if, from any cause whatsoever, they happen to get loose, they shall forthwith become harmless.

The second recognizes, in order to meet certain imperious military necessities of which the belligerents are the best judges, the right to utilize these engines even outside the heretofore limited zone and without obligation to make them stationary, but upon the absolute condition (a condition which according to the declarations of the various navies is likely, it seems, to be fulfilled) that

they shall cease to be hurtful at the expiration of a sufficiently brief time so that neutral craft traversing the scene of action after the two belligerents may not have to suffer therefrom. It does certainly not belong to me to decide [535] the question whether that condition is really realizable. I can only say that in my opinion it is one that is absolutely indispensable.

These two simple and specific rules appear to have raised no fundamental objection. Nevertheless, it does not seem futile to submit to the Commission the following consideration:

At the present time, war fleets, warned by recent events, have provided themselves with a device which sufficiently insures their protection against submarine mines. Any naval forces, operating in quarters where they may have cause to fear the presence of those engines, will make use of those protective means and, for the most part, the employment of mines against them will merely retard the fleet's movements. This means of safety, relatively easy for a military fleet, becomes a material impossibility for isolated commercial craft.

It seems therefore indispensable to insist most especially on the fact that rejection of liminary rules inspired by those which have been presented for the consideration of the Commission would be tantamount to recognizing the right for belligerents to utilize mines under conditions that would make them hurtful almost exclusively to neutrals.

It seems, then, that there could not exist the slightest hesitation in this Commission, which has here a golden opportunity for drawing up a rule of such a nature as to satisfy the yearnings of the civilized world on a point which so deeply and so deservedly engrosses its attention. The French delegation will be happy to accept any proposition inspired by the principles which have just been recalled.

Captain Behr then takes the floor and says: I desire to state that I fully sympathize with the sentiments which the delegate from France has just expressed.

The Russian delegation thinks that the preliminary exchange of views that has thus far taken place in the subcommission has already brought out in part the difficulties involved in solving the mine question. Drifting mines constitute an incontestable danger, for they are the gravest menace to neutrals, that is to say, to those who remain strangers to the war; moreover, these mines adrift at sea after the conclusion of peace are often hurtful to the interests of the former belligerents themselves.

But floating automatic submarine contact mines, as well as those that are anchored, are a defensive weapon so powerful that, despite their dangers, no one can think of actually prohibiting their use.

True, the British proposition forbids the use of floating mines in its first article.

Nevertheless the naval representative of Italy has expounded with such ability the viewpoint according to which the employment of mines is at times the only chance of safety left to a ship pursued by a stronger foe, and Captain OTTLEY has declared that his Government will not oppose the use of floating mines, on condition, however, that they be provided with mechanisms that would render them harmless after a very brief lapse of time.

This is why neither the modified British draft, nor the Italian motion is opposed in theory to the use of submarine contact mines, and it is only a ques-

tion of determining the technical improvements to be introduced into those mines along the lines above mentioned.

No one contests the principle: every floating mine, after a certain interval, every anchored mine, after having broken its cable, should immediately [536] become harmless. The difficulty begins only when one wishes to put that principle into practice. It is here that the importance of the technical side of the question makes itself felt.

Can one feel sure that this side of the question is actually solved in a satisfactory manner and that this solution of the problem is familiar to all Powers? It is more likely that this solution will yet require time and experimenting. It is already one point gained to have turned men's thoughts into this humane channel. The very fact of having entered upon a discussion of this question denotes an advance of great importance which points out to Governments the direction in which they should concentrate their efforts.

As to the purely technical aspect of the question, it seems to me that at present there exists no safety appliance which is generally adopted or which has even been tried and found capable of rendering mines inoffensive. Likewise if war were to break out the day after the adoption of a provision prohibiting the use of mines not provided with the aforementioned appliance, States having adhered to the provision would find themselves deprived of a most important means of defense. This is why I think it would be useful to add the following amendments to the drafts already presented.¹

His Excellency Count **Tornielli** has heard with much interest the statement of principles made by his eminent colleague, Mr. **LOUIS RENAULT**, and has listened with close attention to the reading of the Russian proposition. After hearing a simple reading thereof he is not in a position to say whether he can associate himself entirely with the views just advanced, but he is anxious to state that in Italy's demands relative to the employment of mines there is nothing in opposition to the humane principles set forth by the French delegation. He thinks he can, therefore, rally to those principles. He reserves the right to examine in detail the conditions under which the use of mines should be permitted according to the Russian proposition. He observes that the question is not that they should pronounce upon the efficacy of the means now at hand for rendering mines inoffensive for neutral shipping. He states that the understanding appears to have been reached about this essential point that the mines to be used must be harmless after a very limited time and that, when they comply with that condition, their use cannot be prohibited.

The **President** proposes to appoint a committee of examination which shall be composed of the bureau of the subcommission and the delegates of the countries which have submitted propositions or amendments.

His Excellency Count **Tornielli** remarks that the proposition presented this day by his Excellency General **PORTER** could not be brought before a committee of examination before it had been discussed in the subcommission. Although it had been unanimously agreed that any new proposition was to be filed, printed and distributed before last Saturday, no one has had previous notice of the intention of the delegation of the United States to submit at this time a proposition which consists in taking up again on its own account the proposition on the subject of unanchored mines which had been formulated by the

¹ Annex 18.

British delegation. It will be remembered that an agreement was reached between the delegations of Italy and England respecting the employment of unanchored mines.

Commander OTTLEY had given up his first proposition when convinced that the use of these dangerous engines could be regulated in such a way as to render them just as harmless for commercial shipping as any other kind of mines. If the United States delegation maintains its proposition, the latter will assume the character of a new proposition. Hence it would be necessary [537] for the subcommission to examine it, and, if need be, vote on the question thus put into discussion again.

The **President** asks General PORTER and Captain BEHR whether they concur in this view that their propositions ought to be considered as amendments to the British plan.

According to his own opinion the American proposition, which he reads for the second time, has the same purpose as the proposition filed by the British delegation, which until now conserves its original form, despite the declarations of Captain OTTLEY.

Mr. **Louis Renault** explains that it is true that all the propositions are still with respect to each other in the form in which they were filed. It will be the business of the committee of examination to coordinate them, taking into account, of course, the modifications which their authors have made therein.

Lieutenant **Ivens Ferraz** asks whether it is not expedient to discuss the amendment submitted by the German delegation respecting the employment of mines in the theater of war; he thinks that in view of the importance of the subject, it would be useful to discuss it at the meeting of the subcommission.

Rear Admiral **Siegel** says that he reserves for the committee of examination the explanations which he proposes to present in connection with his amendment.

The **President** proceeds to the composition of the committee of examination. He proposes that every delegation that submitted a proposition or an amendment designate one of its delegates, and that the French delegation likewise appoint a representative.

There are consequently appointed:

Rear Admiral **SIEGEL** (Germany).

Rear Admiral **SPERRY** (United States of America).

Commander **BURLAMAQUI DE MOURA** (Brazil).

Captain **CHACÓN** (Spain).

Captain **OTTLEY** (Great Britain).

His Excellency Count **TORNIELLI** (Italy).

Rear Admiral **HAYAO SHIMAMURA** (Japan).

His Excellency Vice Admiral **Jonkheer RÖELL** (Netherlands).

Captain **BEHR** (Russia).

The French delegation will designate its representative later.

The Chinese delegation desires to be represented on the committee, and Colonel **TING** is named to that effect.

The **President** reserves the right to notify the date of the convening of the committee of examination, as well as the date of the next meeting of the subcommission, which will take up the subject of the shelling of forts, cities, etc.

The meeting is closed at 4:30 o'clock.

FOURTH MEETING

JULY 18, 1907

His Excellency Mr. Francis Hagerup presiding.

The meeting opened at 3 o'clock.

No remarks having been made upon the minutes of the preceding meeting, the minutes are considered adopted.

The **President** announces that the committee of examination of the first subcommission (mines) will convene after the adjournment of this meeting.

The day's program calls for the discussion of the bombardment of ports, towns and villages, etc., by a naval force.

The **PRESIDENT** recalls in a few words how this question came before the present conference.

The First Hague Conference adopted a rule prohibiting the bombardment on land of undefended towns, and at that time the competent commission proposed the expression of a *vacu* looking toward the extension of this provision to naval war; it was decided to refer the study of the question to a future conference.

At the commencement of its work, the Third Commission of the present Conference received five propositions upon the question of bombardment, presented by the delegations of the United States of America, Spain, Italy, the Netherlands and Russia. Upon the initiative of the Italian delegation—for which the **PRESIDENT** takes this occasion to express the gratitude of the subcommission,—the above-mentioned five delegations combined their propositions into a single draft, which constitutes Annex 6. This draft is submitted to the deliberations of the subcommission. Before reading it, the **PRESIDENT** opens the general discussion.

His Excellency Count **Tornielli** says that he is very happy to have been able to contribute to the unification into a single draft of the propositions which at first appeared so different one from the other. The Italian delegation feels impelled, on the other hand, to declare that the initiative of the proposition relative to the bombardment of towns, villages, etc., for the refusal of requisitions, did not emanate from itself.

[539] His Excellency Mr. **A. Beernaert** delivers the following address:

Gentlemen: As one of the survivors—now rare—of the assembly of 1899, permit me to review briefly the precedents of the question of which the **PRESIDENT** has just spoken.

At the Congress of Brussels in 1874, which for the first time attempted to settle the laws and customs of war on land, agreement was manifested upon two big principles, which Mr. **MARTENS** did not recall to us yesterday and which

are as follows: It is forbidden to harm in any way populations who take no part in the military operations; and, even between combatants all unnecessary infliction of injury is forbidden. These rules were the basis of the work of the First Hague Conference, and thenceforth form a part of positive international law. Have they always since then been scrupulously observed? That is another question, and I am glad not to be obliged to speak to you on that subject.

The principles which I have just recalled to you are the basis of Article 25 of the treaty, which forbids belligerents to attack or bombard all villages, towns, dwellings or buildings which are undefended. But this rule only applies to operations of war on land. That was the sole question before the Conferences of Brussels and The Hague. Sir JULIAN PAUNCEFOTE opposed formally the idea that the rule should receive a more extended application. The English Government, declared he, only consented to take part in the Congress upon the express condition that everything pertaining to naval war would be eliminated.

However it was impossible for the plenipotentiaries of 1899 not to be struck by the strangeness, uniqueness and incongruity of a juridical situation which permitted the same belligerents, in the same war, to bombard a town from the sea, while formally forbidding them to do so on land.

Remarks thereupon were made, not only by the delegates of Belgium but also by Colonel GILINSKY and by General DEN BEER POORTUGAEL.

The reply was anticipated; the incongruity was of little consequence, if there was a convention.

But the question arose whether bombardment of a port by a fleet constituted clearly an act of naval war.

Of course the vessels and their guns are on the sea, but they strike the land; if reply is made to them, it is from the land; and if the bombardment has the desired effect—one does not bombard for the mere pleasure of bombarding,—if the assailant desires to reap any advantage therefrom, it will be absolutely necessary for him to send detachments ashore. Are these acts of naval warfare?

At the very least, it would seem to him that bombardment of a port by a fleet constitutes an act of mixed warfare—it is a duel between land and sea; therefore why should the rules of naval war apply here rather than those of war on land?

One other consideration seemed of great importance. As is well known, each State claims sovereignty over the sea which washes its shores, to a point within cannon range. It is territorial sea and is subject to a different juridical rule. In general the sea does not belong to anyone; it has no master, or better, it is owned by all as a vast bond of union and a means of *rapprochement* between the peoples. But within the limits where the sea has a sovereign, is it not the accessory of the State which dominates it, just as the mouth of the adjacent river? In the Russo-Japanese war, it was maintained, and not without reason, that a neutral Power had no right to permit the fleet of either of the belligerents to remain in its territorial waters.

[540] From all of these considerations it was concluded that the bombardment of a port by sea approaches nearer to war on land than to naval war.

These arguments were, on the other hand, stoutly contradicted and the debate was along these lines:

Mr. MARTENS, who presided over the second section, expressed the opinion that a question of competence could only be determined by the Commission in plenary session, and reference was made thereto. But in spite of the efforts of our lamented colleague, Count NIGRA, and my own, postponement again carried the day at the plenary meeting. It is well known that in deliberative assemblies no proposition is so sure to meet with favor.

The question of bombardment by sea was, then, referred to a future conference; it is on our program and we must solve it.

We have received on this subject propositions of the United States, Russia, Italy, Spain and the Netherlands, and, as was told you a minute ago, these Powers have since agreed to present us with a sole text; permit me to say a few words regarding it.

The first four articles are simply reproductions of the provisions of Articles 25, 26, 27 and 28 of the code in force for war on land, except for the addition relative to historic monuments, which it is indeed necessary to approve. Was this repetition at all necessary, or would not an extensive reference to the above-mentioned articles have sufficed? An explanation on this subject will probably be given in good time.

If these four articles are maintained, I think that "*by sea*" should be added to Article 4, since this provision has no other object, and I ask if, in Article 3, it would not be better to speak of the *storming* by a *fleet* of an *open town*.

Articles 5, 6 and 7 alone are essential inasmuch as they stipulate under what exceptional conditions an undefended port may be bombarded. I approve nearly all of the provisions of Article 5. If there are war-ships in a port or if military establishments are there which are not destroyed upon summons, they must undergo the exigencies of war; but is it not being very vague and general to apply the same provisions to the existence of *depôts of arms* or of *matériel* not otherwise defined?

As to Article 6, which I would like to see eliminated, would it be right to authorize bombardment of a locality which refuses, upon summons, to furnish provisions and supplies if to do so would exhaust it and if the amount demanded were excessive? I know that the text provides "for the immediate needs," but will not the commander of the naval force claim to be the only judge of that?

Article 7 does not seem to me less susceptible of criticism. An army on land cannot demand contributions of the occupied State except in exceptional cases and for the needs of the army or administration, and upon the order of the commander in chief. It seems that here the restrictions disappear and that bombardment only is forbidden; but are we not already in agreement that holding to ransom is forbidden and that bombardment cannot take place with such a purpose in view?

I submit these cursory remarks to the attention of the assembly.

His Excellency Lieutenant General Jonkheer den Beer Poortugael declares that in view of the remarks of his Excellency Mr. BEERNAERT he renounces his right to speak on the whole draft; what he has to say applies specifically to Article 4, and he reserves for himself a word when this article comes up for discussion.

His Excellency Count Tornielli replies to the remarks made by his Excel-

lency Mr. BEERNAERT upon the joint draft. He explains that if its authors have given preference to certain distinct articles instead of limiting them [541] selves to a reference to the corresponding articles of the Convention of 1899 respecting war on land, it is because in their preparatory conversations they were convinced that the thought prevailed in the minds of the technical delegates that war at sea has special exigencies. In view of what might be excessive in this tendency, it was decided to draw up a precise text, which would anticipate every case and serve as an instruction to marine officers.

Regarding the modifications in wording, his Excellency Count TORNIELLI has no objections to the words "*by sea*" being added to Article 4 after the word "*bombard*," conformably to the proposal of his Excellency Mr. BEERNAERT.

Regarding the criticism of the words "*depots of arms, etc.*," contained in Article 5, it is necessary to make a distinction: if there are only small depots or establishments, it is very evident that the inhabitants would always be able to themselves destroy them in order to escape bombardment. But if there are large establishments or depots, it is certain that a fleet or war-ship will not permit them to stand; they will either summon the inhabitants to destroy them or else destroy them themselves.

His Excellency Mr. A. Beernaert recognizes the justice of the explanations given by his Excellency Count TORNIELLI upon the first four articles of the draft, but he states that, if it is the idea of the authors of the draft to establish a general codification of the rules of naval war, it will be necessary to refer to many other provisions regarding war on land which have not been incorporated in the draft.

The President points out that such doubtless was the idea of the authors of the draft. It should be noted, however, that the Third Commission has only the question of bombardment to deal with; the other questions concerning the application to naval war of the rules adopted for war on land were submitted to the Fourth Commission for examination.

His Excellency Mr. Nelidow remarks on this subject that it will evidently be necessary later to formulate a complete act setting forth the provisions adopted for war on land, for naval war, and for special questions. The task of coordinating these provisions will fall naturally upon the Drafting Committee of the Conference.

His Excellency Mr. Tcharykow, in the name of the Russian delegation, reads the following declaration:

Mr. President: I desire in the name of the Russian delegation, to make a suggestion concerning the grouping of the articles presented to the subcommission.

These articles reproduce in a concise form and, I believe, complete the texts of the various propositions which have been laid before the subcommission on the subject of bombardment by naval forces. Moreover, these articles are arranged in the draft which has been submitted to you in such a manner as to form two distinct groups. First, commencing with Article 1, come those which deal with all bombardments which may be made by naval forces in general. Then, from Article 4, come those which deal with the bombardment of undefended ports, towns, villages, dwellings or buildings. In these two groups of articles have been comprised all the provisions of the Regulations of 1899

respecting war on land which can be applied to the case of bombardment by a naval force.

But, in the latter regulations the different articles are divided, as you know, into chapters and sections forming homogeneous parts.

[542] Would it not be useful to apply the same method to the articles which we have before us and to group them in two chapters? The first might be entitled: "Bombardment by naval forces in general" and might comprise Articles 1, 2 and 3; it might fix the rules for bombardment by naval forces, whatever the objective. The second chapter might be formed of Articles 4 *et seq.* under the title: "Bombardment by naval forces of undefended ports, towns, villages, buildings or dwellings."

This division, which does not affect in any way the text of the draft provisions, seems necessary to us in order to render the meaning clearer and the application simpler.

In view of these considerations we have the honor to propose that the draft which has been submitted to us be divided into two titled chapters, such as we have just indicated, and we request that our suggestion be communicated to the committee of examination.

Captain Ottley submits to the assembly certain observations relative to the joint draft.

According to the text of Article 2: "A commander shall do his utmost to warn the authorities before commencing the bombardment."

This rule appears to us a little severe, for there will be many occasions when it will be the duty of an admiral to destroy as quickly as possible an enemy fortress or arsenal.

Why should a commander be required to warn the authorities before commencing the bombardment when to do so would certainly diminish the efficacy of his operations?

Suppose that he arrives at a fortress without having been observed. Should he wait until the inhabitants have been warned and the cannon on land loaded?

We are of opinion that he has, on the contrary, the absolute right to commence his operations without delay, and that it is therefore necessary to eliminate Article 2.

On the other hand, it appears from Article 5 that before commencing his operations against an enemy naval force anchored in an undefended port, the commander of a fleet must allow a reasonable delay to the authorities of the port where this naval force is located.

But, one can imagine the case of a fleet belonging to a Power A which arrives at some port in which a naval force of the enemy B is anchored.

The latter is awaiting the arrival of a friendly squadron, B1, and when the union is accomplished, these two naval forces B plus B1, together, will be able to overwhelm fleet A.

The commander of this fleet A, let us say, arrives only an hour in advance of squadron B1, etc.

Can we contend that the commander of the fleet A had no right to immediately attack the vessels in the roadsteads in order to prevent their joining their allies, when such a union would augment their military value to a considerable degree and deprive the former of a victory important to his arms?

Moreover, the necessities of war might demand the immediate destruction of

a workshop utilized for the needs of the fleet. Let us suppose that this establishment is prepared to revictual an expected fleet and to make repairs upon it without which the fleet would not be in condition to continue its operations. Should it be demanded of an enemy naval fleet that it await the response of the local authorities, which would necessitate a delay of many hours during which the awaited fleet might arrive?

[543] We are of opinion that in safeguarding as far as possible non-combatants and private property of individuals on land, we ought not, when war exists, restrain operations that are permissible and directed in this way solely against the belligerent power of the enemy. Article 5 appears to us, in consequence, susceptible of an amendment, worded thus: "*and which seems, moreover, to respond to the ideas enunciated in the different propositions presented separately by the delegations of the Powers above mentioned.*"

Add at the end of Article 4:

Nevertheless, these ports, towns, villages, dwellings or buildings cannot be considered as protected from unintentional damages which might result to them from the destruction of military works, military or naval establishments, depots of arms or war *matériel*, workshops utilized for the needs of the hostile fleet or army, or ships of war in the harbor.

Eliminate Article 5.

As a consequence the present Article 6 would become Article 5, and Article 7 would become Article 6.

His Excellency **Keiroku Tsudzuki** makes the following remarks:

The delegation of Japan is able to accept nearly all of the propositions made separately by the different Powers on the subject of the bombardment of ports, towns and villages by a naval force. Therefore it all the more regrets not being able to accept Articles 2 and 5 as they have been worded in the new joint proposition of the five Powers.

As to Article 2, we do not see why, in undertaking the bombardment of *defended* towns, as, for example, military ports, the commander of the vessels should warn the authorities in advance.

It is also difficult to understand the necessity of warning the local authorities regarding an attack on war-ships in ports or military or naval establishments, etc., and of waiting quietly for the local authorities to themselves destroy them.

Consequently, the delegation of Japan would prefer that the original proposition of the delegation of the United States of America combined with the original proposition of the Russian delegation be adopted by the Commission.

However, after hearing the remarks of Captain OTTLEY, his Excellency **Mr. KEIROKU TSUDZUKI** declares that the Japanese delegation will support the British proposition.

No one having requested the floor, the **President** declares the discussion closed.

Apropos of Article 1,¹ Captain **Behr** calls the attention of the assembly to the second paragraph which provides for the designation by special signs of the monuments, edifices or meeting places which may not be bombarded. This paragraph is the reproduction of Article 27 of the Convention of 1899 respecting

¹ Annex 6.

war on land. It is very important to determine what these special signs shall be. However, because of the technical character of this question, Captain BEHR proposes to refer it to the committee of examination. He confines himself to saying that in his opinion the sign adopted should not be that of the Red Cross.

[544] The **President**, while recognizing the interest of the question, remarks that it has already been studied by the different technical delegates without their having been able to arrive at any acceptable solution.

His Excellency Count **Tornielli** admits, on his part, the necessity of determining the sign in question, but, as the **PRESIDENT** has just said, the problem has already been studied without success at the preparatory meetings in which the joint draft was drawn up. The **PRESIDENT** might perhaps request the technical delegates of the commission to again seek an agreement upon this subject. As for himself, his Excellency Count **TORNIELLI** is willing to accept any sign whatsoever which may be adopted.

Mr. **Georgios Streit** (reporter) recalls that Article 1 of the joint draft is a reproduction of the corresponding article of the Convention of 1899 respecting war on land; only the words "historic monuments" were added by the authors of the joint text upon the request of the Greek delegation. He expresses the hope that this addition will be accepted by the commission.

The **President** proposes that Article 1 be approved, with reservation of the question of special signs for a future examination. It is thus decided.

The **President** then reads Article 2¹ which, following the remarks of Captain **OTTLEY**, the British delegation requests be eliminated.

His Excellency Count **Tornielli** comments upon the text of Article 2 as it appears in the joint draft; he asks the **PRESIDENT** to be good enough to put this article to a vote. As he sees it, the rule contained in Article 2 does not seem to him too severe and is not contrary to the duty of an admiral to destroy with the least possible delay an enemy fortress or arsenal, for the expression "shall do his utmost to warn the authorities," gives a latitude which seemed sufficient to the authors of the draft.

His Excellency Mr. **Beldiman** proposes to insert in Article 2, after the words "*his utmost*," the words "*if the strategic situation permits*." He thinks that the British delegation would perhaps accept this new wording.

Rear Admiral **Siegel** proposes on his part to substitute the word "*military*" for the word "*strategic*" in the addition proposed by the first delegate of Roumania.

Their Excellencies Count **Tornielli** and Mr. **Keiroku Tsudzuki** accept these modifications.

Upon request of Captain **Ottley** the **President** reads the new text of Article 2, which is worded as follows:

The commander of attacking naval forces, before commencing the bombardment, shall do his utmost, if the military situation permits, to warn the authorities.

Mr. **Louis Renault** would prefer the following wording:

The commander of attacking naval forces, before commencing the bombardment shall, if the military situation permits, do his utmost to warn the authorities.

¹ Annex 6

The point in question there is merely one of editing which the committee of examination would be in a better position to decide than the subcommittee.

[545] Captain **Ottley** accepts the new wording proposed by Mr. **LOUIS RENAULT**.

His Excellency Count **Tornielli** regrets not to be able to accept the second wording; he remarks that he has acceded to the amendments proposed to Article 2 in a conciliatory spirit. But if this adhesion does not suffice to bring about an agreement, he would feel obliged to move that a vote be taken upon the text of Article 2 as worded in the joint draft.

His Excellency Mr. **Beldiman**, in view of the refusal of the British delegation to accept the wording which he has proposed, and to which the authors of the joint draft have agreed, thinks with Mr. **LOUIS RENAULT** that the question might be referred to a committee of examination in order to save the commission from discussing any longer a mere matter of style.

His Excellency Count **Tornielli** has no objection to this question being referred to the committee of examination, provided the minutes mention expressly the points upon which he has just insisted.

The **President** then declares that Article 2 is approved by the subcommittee with this reservation and passes to Article 3, which he reads.

Mr. **Louis Renault** remarks that the word "*even*" would be better placed after the words "a town or place." It is a mere question of editing.

No one having demanded the floor, Article 3 is approved.

The discussion turns upon Article 4 of the joint draft,¹ which the **President** reads.

His Excellency Lieutenant General **Jonkheer den Beer Poortugael** makes on the subject of Article 4 the following declaration:

GENTLEMEN: We will undoubtedly agree upon the point that it is important for us to know just what we mean by the expressions we use.

In Article 4 there is among others a reference to an undefended town. What do we mean by an undefended town?

In land warfare there is no doubt; it is as clear as day. An armed force is marching toward a town. This town is either fortified or open. Even if it is ordinarily open the entrances might be defended by temporary fortifications, breastworks, barricades and tambours. It goes without saying that the assailant has a perfect right to destroy this defense with the aid of his artillery in any manner which he finds most efficacious, so that he can take possession of the city. However he will concentrate this artillery against the means of defense, against the breastworks, against the artillery and the defending soldiers, and take care not to send his grenades or shells uselessly into the town itself, for these projectiles would have no other result than to set fire to a few buildings. By acting in this way he will prove himself to be at one and the same time a man of heart and a man who understands his business, qualities which are generally found together.

But in the matter which now claims our attention, there is danger of a difference of opinion.

Naval forces do not march towards a town. Their aim is not to possess themselves thereof except in case they act conjointly with land forces. I

¹ Annex 6.

naturally have in mind, not fortified ports but unfortified or undefended towns or villages.

[546] In order better to explain my idea take, for example, our coast, which is washed by the North Sea. Along this coast near the sea are, here and there, a town and villages, The Hague or Scheveningen, Katwijk, Noordwijk, etc.

Suppose the case—which God forbid—that instead of so many friends whose representatives are here assembled, that we should have one day an enemy who attempts to undertake a landing, seconded by his fleet. Naturally we will welcome him with all the honor due his kindly intentions. We will do everything to hinder him. Detachments of artillery, infantry and cavalry will be dispatched to the dunes of Scheveningen, Katwijk, etc., and we will defend our coasts, in order that the enemy may not land.

Scheveningen is, so to speak, The Hague. Would one, because of the defense of the Scheveningen coast, be able to regard The Hague as defended in order to bombard this open town?

No, certainly not. The enemy certainly has every right to use his artillery against our artillery and the other defenses of the coast, to whatever extent he deems advisable, but he has no right to bombard the town under the pretext that it is a defended town. In my opinion that would be ruthless and a violation of the principles of law, because it would be a useless cruelty; for it goes without saying that even if half of these peaceful and flourishing villas which you admire, with the Castle of the Counts in which we hold the Peace Conference, were injured by the flames and if the Palace of Peace, whose corner stone is to be laid in a few days, were ruined by the bombs, our soldiers in the dunes would not suffer thereby and their ardor for battle with such destructive barbarians would even be stimulated.

I have taken as an example the town we are in, but naturally the case is the same with all the open towns situated near the coast.

I say then that it is essential to differentiate between the defense of the coast and the defense of a town situated near that coast, and that by *defended town* we only mean a town which is itself directly defended.

The **President** reads anew Article 5; he recalls that the amendment of the British delegation has for its object to eliminate this article and to add to Article 4 a new paragraph which he also reads.

His Excellency Count **Tornielli** is of opinion that the British amendment, by transposing the text of Article 5, tends to the elimination of two very important things, *vis*: the formal summons which should be made before resorting to violence and the delay which should be allowed the inhabitants to act in accordance with the summons. He does not think that the authors of the joint proposition would be disposed to renounce these necessary guaranties. If the British delegation insists upon its amendment, he will feel impelled on his part to ask that a vote be taken on the text of Article 5 as it was drawn up by the five delegations.

Rear Admiral **Siegel** remarks that Article 5 mentions only military and naval works, but omits the installations which are not of a military nature.

However there may be close to an unfortified town an important railroad junction, a floating or graving-dock, or even useful supplies belonging to a private company or an individual. The belligerent would have a great military interest in destroying them by the bombardment of a naval force, particularly

if he had not sufficient troops to land in order to destroy them in any [547] other manner. Rear Admiral SIEGEL proposes then to insert in Article 5, paragraph 1, after the word "workshops" the words "plant and supplies which might be utilized."

His Excellency Mr. Tcharykow seconds the amendment proposed by Rear Admiral SIEGEL.

His Excellency Mr. A. Beernaert thinks that to adopt this amendment is tantamount to the renunciation of rules on the subject of bombardment, for in this case it would always be permissible.

Captain Burlamaqui de Moura requests a precise definition of an "undefended town."

Mr. Georgios Streit remarks that the points which have just been made by his Excellency General DEN BEER POORTUGAEL, and on the subject of which no objection was expressed in the subcommission, will be inserted in the minutes and will serve as an interpretation of Article 4; a precise definition of a defended town seems difficult to formulate even in the text of the draft.

The President supports this view-point of the REPORTER.

Captain Ottley recalls the declaration which he made on the subject of Article 5; he is of opinion that it is sometimes impossible for a commander of a fleet to grant a reasonable delay to the local authorities before proceeding to a destruction of ships of war in a harbor, etc.

His Excellency Count Tornielli insists that Article 5 first be voted upon in its original form with the German addition, which he accepts.

His Excellency Lieutenant General Jonkheer den Beer Poortugael says that since his Excellency Count TORNIELLI accepts the German amendment, it is not necessary to vote upon Article 5. He accepts the insertion of the word "plant," but he opposes absolutely the insertion of the word "supplies."

His Excellency Mr. van den Heuvel requests of Rear Admiral SIEGEL that he be good enough to specify what he means by "supplies." Does this expression include depots of coal, provisions, clothing, etc., in short, all the stores and warehouses, public and private, which are naturally to be found in the large commercial ports? This would be equivalent to saying that all maritime districts may be bombarded.

Rear Admiral Siegel says that his amendment refers particularly to coal, to get possession of which would be of great military importance.

The President remarks that it is well understood that all the provisions which we are discussing refer only to naval war.

His Excellency Mr. Hammarskjöld is of opinion that the German amendment is of too wide a scope not to require the most profound study. He does not know how to vote upon it, and he desires therefore that this amendment be first printed and distributed.

His Excellency Count Tornielli observes that the examination of the draft under discussion could be finished at to-day's meeting and that, after having been submitted to the examination of a small revision committee, the text would be brought before a full meeting of the Third Commission for discussion. Then all the reasons on which the delegation of Sweden bases its arguments for a postponement of the present discussion can be submitted.

[548] It certainly seems excessive to postpone the continuation of the discussion for a week.

The President endorses the view-point of his Excellency Count TORNIELLI.

His Excellency Mr. A. Peernaert requests Rear Admiral SIEGEL to be good enough to examine anew the intent of his amendment and denies that the existence of an important railway junction near an undefended town authorizes bombardment. The rule should be the same for naval operations as for war on land.

Rear Admiral Siegel says that he is willing to withdraw the word "*supplies*" since the expression "*war matériel*" which is now in Article 5 is entirely satisfactory to him.

The President then proposes to put Article 4 to a vote just as it is, and then Article 5 with the amendment proposed by Rear Admiral SIEGEL, that is to say, with the insertion of the words "*and plant*" after the word "*workshops*" in the third line of Article 5.

Mr. Louis Renault, without entering into a detailed discussion of Article 5, and of the technical side of this provision, thinks it necessary however to recall that the needs of naval war are sometimes very different from those of war on land.

In the case actually under discussion it is very evident that the belligerent on land has no need to proceed always to the destruction of a railroad or of a depot of coal: he simply takes possession of it. It is very different with naval operations. The commander of a naval force may not have a landing corps at his command; also it may be necessary for him to make a hasty withdrawal, and it would be necessary for him to destroy before his departure either the railway or depot of coal which is useful to the enemy. Indeed, the same object is pursued on land as on sea—harm to the enemy,—but by force of different circumstances, it is necessary to have recourse to different means. Because a military operation does not occur in war on land, it does not logically follow that it should be forbidden in naval war.

After this explanation, the President moves to proceed to a vote.

His Excellency Count Tornielli begs the PRESIDENT to keep a record of the desire expressed by certain delegates who were engaged in the preparatory work, who desired that the provisions of Articles 4 and 5 be joined by the word "nevertheless."

Captain Behr asks if, in voting upon the adoption of Article 5, one rejects implicitly the British amendment.

The President replies that to vote "yes" signifies a demand to maintain the text in the form of the proposition; therefore those who vote "yea" vote against the British proposition.

His Excellency Sir Ernest Satow thinks that it would not be very regular to have two successive votes, which would be equivalent to voting twice against the British amendment.

The President points out that in view of the fact that it is not a question of a definitive vote, but of propositions to be presented to the plenary meeting, [549] there could be no confusion between the two votes which are only for the purpose of enlightening the assembly upon the attitude of its members towards the two propositions.

He will put to a vote Articles 4 and 5 with the addition proposed by Rear Admiral SIEGEL, then the British amendment.

The vote is taken by roll call. Article 4 receives a unanimous vote; Article

5 is adopted by 21 votes against 6. There is one abstention; 17 States take no part in the vote.

The vote upon the British amendment has the following result: 23 nays and 6 yeas.

The **President** then reads Article 6¹ of the joint draft.

His Excellency Vice Admiral **Mehemed Pasha** makes the following declaration:

In the name of the Ottoman delegation I have the honor to propose the following amendment to Article 6 of the proposition concerning bombardment:

The commander shall not, however, have recourse to such a measure if it is proven that these ports, towns, villages and dwellings are not in a position to furnish the provisions or other supplies necessary for the immediate needs of a naval force present.

The **President** observes that there is no inconsistency between the provisions of Article 6 and the proposal of the Ottoman delegation.

Rear Admiral **Sperry** proposes to substitute the first paragraph of the proposition of the United States of America² for Article 6 of the joint draft.¹

Mr. **Georgios Streit** observes that if it is stated in the minutes that the principles relative to requisitions in war on land are applicable to naval war, the amendments proposed by the delegations of the United States and Turkey would be useless.

His Excellency Count **Tornielli** points out that the interpolation of the words "and in proportion to the local resources," after the words "naval force present," would satisfy the just desires of the Ottoman delegation.

The **President** thinks that this question might be left to the committee of examination. It is a question here of applying as far as possible the rules concerning requisition in war on land to naval war.

His Excellency Mr. **A. Beernaert** recalls that in Article 52 of the Convention of 1899, where requisitions are mentioned, it is a question of procuring provisions and supplies, while in Article 6 the restriction is not so clear. It will be necessary to bring the two articles more in harmony.

His Excellency Mr. **Nelidow** believes that there are many points which should be submitted to the committee of examination; there are in fact points common to war on land and naval war; there are certain others which it would be necessary to vote upon. In such manner clearness and precision may be obtained.

His Excellency Count **Tornielli** thinks that if his Excellency Mr. **BEERNAERT** desires to formulate an addition to the text which has just been examined, all of the delegations will be glad to take it under consideration.

The **President** shares the opinion of the first delegate of Belgium that it will be necessary to reach an agreement relative to the conditions under which contributions may be levied; this question will be settled later.

He passes to Article 7 which is approved without discussion.

[550] The proposition of the Russian delegation relative to the title of the draft is then read by the **PRESIDENT** and submitted to discussion.

¹ Annex 6.

² Annex 1.

Mr. Louis Renault does not think that the proposed new wording should be settled by the commission in a body. This question should devolve upon a more restricted committee. In his opinion, the wording of the joint draft is far from perfect; for example, a heading should be placed above Article 4, which lays down a cardinal principle. He recommends to the committee of examination that they take account of the division of the articles as proposed by his Excellency Mr. TCHARYKOW.

The President then proceeds to the formation of the committee of examination; this will be composed of the Bureaus of the Commission and subcommission; because of the technical character of the questions to be examined, the naval delegates of the Powers who formulated the propositions or presented amendments will likewise form a part of it.

The committee of examination will meet next Saturday at 11 o'clock.

The meeting is adjourned at 5:30 o'clock.

THIRD COMMISSION
SECOND SUBCOMMISSION

FIRST MEETING

JULY 2, 1907

His Excellency Count Tornielli presiding.

The meeting is opened at 10:50 o'clock.

The proposition of the German delegation concerning the amendments to be introduced into the provisions of the Convention of July 29, 1899, etc.;¹ the two propositions of the French delegation concerning the additions to be made to the Convention of 1899, etc.;² and the draft of the Japanese delegation defining the rules to which the belligerent vessels would be subject in their neutral waters³ have been printed and distributed among the delegates.

The President gives, in the following words, a historical account of the Geneva Conventions and of their adaptation to maritime war:

GENTLEMEN: The history of the Geneva Convention of 1864 is no longer to be made and the excellence of the principles of human charity and generosity which found a faithful application in that international act have long been proclaimed. But at the beginning of labors intended for the purpose of seeking what additions should be made to the Convention of 1899 for the adaptation to maritime war of the principles of the Convention of 1864, some remarks will not be at all superfluous.

The history of the Geneva Convention of 1864 is before us to teach us once more that nowadays when a current of ideas compels the public authorities to take notice of it by starting a movement in public opinion, the triumph of these ideas is forever assured. Their full and complete application in the various countries then becomes but a question of time.

The principles which the first Geneva Conference succeeded in formulating in the International Act of 1864 are as old as humanity itself. Their development is contemporaneous with civilization. For a long time their germ had been deposited in books, laws, and even certain treaties, when, after a great war, public conscience, with a sudden impulse, imperiously demanded the protection of the victims of continental struggles. The Society of Public Utility of Geneva led the movement. Its appeal was heard; but on August 22, 1864,

[554] when the Convention was to be signed, there met only eleven nations, four of which belonged to the German Confederation. In June, 1906, the number of adhesions was 49, and it was possible to say that this agreement might almost be considered as a law of universal application.

From this first statement of facts we may draw a happy presage and great encouragement for the work to which we are now devoting our energy.

¹ Annex 39.

² Annexes 41 and 42.

³ Annex 46.

It was likewise after a bloody sea struggle that the duty of extending the principles of the Geneva Convention to the victims of maritime hostilities found its first confirmation. This duty had been proclaimed by the International Conference of the Committees of the Red Cross held in 1867. Italy then urged the Swiss Federal Government to present the question to the nations signatory to the Geneva Convention. On October 5, 1868, a diplomatic conference took up the program of adapting to the navy the rules established by the Geneva Convention of 1864. At that time were elaborated those additional articles of 1868 which continued as a draft but which were adopted by the belligerents of 1870 as a *modus vivendi*.

It has been said that the work of extension and assimilation performed in 1868 has satisfied the requirements of symmetry, since hospital ships had been assimilated to land hospitals, the vessels intended to gather up the wounded and shipwrecked has been assimilated to flying ambulances, and neutral or hostile vessels had been assimilated to the houses in which the wounded are taken but that maritime practice has not taken it into account. I incline to think there is some truth in this opinion, for it is not the only case in which the efforts of modern diplomacy have been held in check by this practice. I do not think that I will be prejudging your decisions if I point out to you that it was also said that the sterility of the work of 1868 was due above all to the fact that the adaptation of the rules of the Geneva Convention to maritime war will always be very difficult as long as we allow to exist between this war and land war the fundamental difference according to which the rule in land warfare is that private property shall be respected, while in maritime warfare capture, seizure and confiscation are the rule in regard to all private hostile property under a hostile flag. The assimilation placed at the basis of the additional articles by the conference of 1868 attacked the rule of seizability of hostile property. In spite of the reservations which it had been sought to introduce therein, these arrangements remained a dead letter up to the very time when the First Hague Conference partially revived them. If the discovery of the connection existing between the two questions, both of which are now laid before the present World Conference, could result in bringing out the fact that, in declaring that the private property of the belligerents at sea shall be respected, not only a principle of justice is pursued but also a highly humane purpose, this remark would perhaps not be without utility.

In his remarkable report to the First Hague Conference our illustrious colleague Mr. LOUIS RENAULT, reporter of the subcommission, was able to say that the draft of the Convention for the adaptation to maritime warfare of the principles of the Geneva Convention reconciled the interests involved and satisfied the wishes so long expressed that maritime war might no longer be deprived of the humane and charitable element which had been injected into war on land for thirty-five years. But, while it accepted this draft, the Conference of 1899 expressed the wish that a special conference might soon be called for the purpose of revising the stipulations of 1864. It was not until July 6, 1906, that the thirty-three articles of which the revised Convention is composed were approved in full and signed by the representatives of all the nations assembled at Geneva.

[555] The program of our present conference, contained in the Russian circular of April, 1906, was prepared and communicated to the Powers prior to the conclusion of the act of revision of the Convention of 1864. It had there-

fore been unable to take into account the new Geneva Convention applicable to land warfare. Should we nevertheless consider ourselves as being intrusted with the mission of seeking the adaptation to maritime war not only of the principles of the Geneva Convention of 1864, but also of the rules inserted into the revised Convention of 1906? The latter was signed by thirty-four nations, only eleven of which had deposited the ratifications thereof up to the very last days.

The question, whether we are called upon to adapt to war at sea the rules established at Geneva in July, 1906, does not seem to be up as regards the nations which ratified them. But is it the same as regards the others? It will be for their eminent representatives to decide. Your PRESIDENT confines himself to stating that at present eleven Governments are obliged to follow the rules established in the revised Convention of 1906, whereas as regards all the other signatories of this international act the stipulations of 1864 continue to be alone applicable to land warfare.

The subcommission over which I have the honor to preside will, if no observation is made in the form of a preliminary proposition, have to take up at once for examination the amendments to the provisions of the convention of July 29, 1899, presented by the German delegation, together with the French amendments which have just been distributed.

The German Empire is one of the Powers which ratified the revised convention which was signed on July 6 of last year at Geneva. Its delegation to The Hague took into consideration the adaptation of the provisions of 1906 to maritime war.

I think that my colleagues will approve my thanking here the delegates from Germany for the fine order in which their proposition is presented to us. Perhaps we shall not yet take the decisive step in the complete assimilation of maritime to land warfare as regards the assistance and relief to be afforded to the men who are placed *hors de combat*; but the study which we have before us will greatly facilitate for us the work which the program of the Conference of 1907 invites us to perform along this line.

I consequently propose to you to take the German proposition, as presented to us, as the basis of our work of to-day, and I shall begin to read it as soon as the delegates who have asked the floor in the general discussion have expressed their observations to us.

The President grants the floor to Rear Admiral SIEGEL.

Rear Admiral Siegel states as follows the origin and scope of this draft:

The amendments to the provisions of the Convention of July 29, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864, are based on the desire to apply and adapt to war at sea, as far as may be necessary, the regulations of the Convention for the amelioration of the condition of the sick and wounded of July 6, 1906, recently ratified.

They are in general presented in the form of additions to the text of the Convention of 1899, notably as regards Articles 5, 5a, 5b, 5c, 5d, 5e; 6, 7, 8; 10a, 10b; 11a, 11b, and 11c of our proposition; which additions correspond to certain provisions adopted with regard to war on land and which it seems to us might be usefully applied to maritime war.

The text itself of the Convention of 1899, the wording of which is remarkably clear, remains intact with the exception of some slight modifications.

[556] As regards Article 3, we propose to supplant the words "*if the neutral Power, etc., . . .*" up to the end of paragraph, by the paragraph printed alongside in red: "*on condition that they are, etc. . . .*"

We have thought that it would be well to adopt for neutral hospital ships the provision which applies to neutral ambulances in land warfare, that is, the obligation to place themselves under the supervision of one of the belligerents in order to avoid the difficulties which might arise from an absolute freedom of movement.

Article 5a is merely the logical consequence of the proposed modification in Article 3. If it is recognized that neutral hospital ships must be placed under the supervision of one of the belligerents, these vessels must be identified by an external mark. There is no better method of identification than that of flying the belligerent's flag together with that of the Red Cross.

Article 6 modified by the amendments printed in red is merely an extension of Article 9, which seems to belong to the present Article 6.

Articles 7 and 8 receive only insignificant modifications.

As regards the modification proposed to Article 9, it is there a question of principle. According to the present Article 10, the neutral State is in all cases obliged to keep the men landed in one of its ports unless there be an arrangement to the contrary with the belligerent States, whereas in accordance with the addition which we propose to Article 9, the neutral nation could not keep the sailors or soldiers without the consent of the other belligerent. To sum up, the text of the present Article 10 might be maintained or else replaced by the addition proposed to Article 9; finally, we propose to maintain Article 10, and we join fully in the proposition of the French delegation.

Such are the modifications which we have the honor to submit to the examination of the subcommission.

His Excellency **Turkhan Pasha** asks permission to read a declaration in the name of the Ottoman delegation:

On the occasion of the exchange of views which is to take place for the purpose of seeking the means suitable for the extension and completion of the decisions already reached at the First Conference in regard to the adaptation to maritime war of the principles of the Geneva Convention of 1864, the Ottoman delegation deems it its duty to make the following declaration:

As is known, the Imperial Ottoman Government gave its adhesion to the principles of the Geneva Convention throughout their whole extent, but at the same time it formulated the reserves which have been reiterated since in regard to the flag of the Red Cross, which has been chosen by the Conference of 1864 as the distinctive sign of military hospitals and ambulances.

Although recognizing in the most complete manner the inviolability of foreign hospitals and ambulances covered with this flag, and although the commanders of the Ottoman army corps, in the orders of the day transmitted to their troops, always enjoined upon the latter to take every care that the inviolability of the medical personnel and buildings placed under the Red Cross flag should be rigorously respected, the Imperial Government has been unable, owing to certain particular considerations, to itself adopt it. Being obliged, therefore, to find another distinctive sign for its military hospitals and ambulances and for its medical personnel, it chose for this purpose the Red Crescent on a white background, which it has used since 1873, and it brought this measure to the knowledge of the signatories of the Geneva Convention.

As the only purpose of the adoption of a distinctive sign is to enable the belligerents to easily distinguish hospitals, ambulances, and other similar [557] establishments placed under the rule of inviolability, the Imperial Ottoman Government considers that the nations assembled in this Conference cannot refuse to recognize the inviolability of the Red Crescent, on the same ground that it itself recognizes the inviolability of the Red Cross.

In view of the foregoing, the Ottoman delegation requests the Conference to kindly agree to the insertion, in the Convention to be prepared, of a special clause recognizing the Red Crescent as the distinctive sign of inviolability of the hospital ships of the Ottoman Empire.

The **PRESIDENT** states that the Ottoman declaration seems to relate to Article 5, and that therefore the Turkish delegation might formulate its proposition at the time Article 5 is taken up for discussion.

The **PRESIDENT** thereupon proposes, as a method of working, that the Convention of 1899¹ be read, as also the amendments proposed by the German delegation,² it being well understood that the articles to which no amendments are proposed shall be considered as being preserved:

Article 1: No modification.

Article 2: No modification.

Article 3: Amendment presented by the German delegation.

The **PRESIDENT** recalls the explanations offered on the subject by Rear Admiral **SIEGEL** and asks whether the subcommission accepts this amendment or whether anyone has any observations to make.

Mr. **Louis Renault** (reporter) declares that this amendment is of great importance and that there is a difference of opinion between the French and German delegations on this point. With this reservation, he approves the German project and joins in the thanks expressed by the **PRESIDENT** in this regard. Mr. **LOUIS RENAULT** wishes to explain the status of the question and the reasons for the difference of opinion which he has pointed out. It is a question here of neutral hospital ships belonging to private individuals; he recalls the fact that in 1899 a certain hesitation arose on this subject, the question having been asked at that time whether the ships in question ought to preserve the autonomy of the flag or whether they ought on the contrary to enter the service of one of the belligerents and be placed under its direct supervision. It was agreed to decide the question in the negative for the reason that the supervisory measures provided by the Convention with respect to hospital ships of whatever nature were sufficient. These measures relate, of course, to all vessels, whether they belong to the Government or to private individuals, to neutral nations or belligerents. It was considered that these measures were calculated to safeguard the interests of the belligerents.

At Geneva, in 1906, it was necessary to settle a similar question with regard to land warfare, namely, as to what national flag ought to be hoisted by neutral ambulances. It was impossible to refer to the Convention of 1864, which prescribed that the national flag should accompany the flag of the Red Cross, for that Convention did not relate to neutral ambulances, but solely to those belonging to the belligerents.

It must be remembered that in land warfare neutral ambulances act on ground occupied by the belligerents and necessarily within the lines of one of them. This is a capital consideration which triumphed in 1906 and which led to placing neutral ambulances under the direct supervision of one of the belligerents.

It was thought that, by analogy, it would be possible to adapt to neutral hospital ships the solution which prevailed in 1906 with regard to neutral ambulances. But it is important to observe that this analogy is somewhat deceptive.

¹ Annex 38.

² Annex 39.

[558] The situations are not identical, but on the contrary there is a great difference between hospital ships and neutral ambulances. The latter have no independence; the belligerents exercise an absolute power over them, whereas a hospital ship operates in the open sea without any of the belligerents being allowed to exercise an absolute authority over it.

It must be remarked, moreover, that a neutral hospital ship does not necessarily place itself in the service of *one* of the belligerents.

For instance: Following a great naval operation, a hospital ship proceeds from a neighboring port to the scene of hostilities and there gathers up the wounded of the two parties.

By reason of these circumstances, peculiar to maritime war, it will be understood why the maintenance of the autonomy of hospital ships is justified. It is for these reasons that the speaker proposes to reject the German modification of Article 3, the consequence of which would be, as was explained by Rear Admiral SIEGEL, to abolish the final paragraph of Article 5.

Rear Admiral Siegel justifies the proposed modification on grounds of a military nature. There are drawbacks about allowing neutral hospital ships to move about freely within the radius of action of the operations. They may impede the movements of the naval forces and expose themselves to danger. As regards the question of strict neutrality, by placing these vessels under the supervision of one of the belligerents they are exempted from any suspicion of an unfriendly act and all difficulties of this character are thus removed.

Mr. Louis Renault declares that he is not competent to speak in this connection, but he observes that the committee of 1899, in which he alone represented the civilian element, had decided in favor of the maintenance of the autonomy of neutral hospital ships.

The President thinks that in view of the difference of opinion which has just been manifested it appears preferable to leave the question open; it will no doubt be easier to reach a solution by allowing the delegates to make a previous unofficial examination of the matter, the results of which they may make known at a subsequent meeting. Article 3 is consequently reserved.

The President thereupon reads Article 4, to which no modifications are proposed; then he reads Article 5, and Article 5a (new text),¹ the examination of which ought to be reserved owing to their connection with the modifications proposed for Article 3. He states that it is in regard to Article 5 that the Ottoman delegate might deposit his proposition, which would be printed and distributed.

His Excellency Baron Marschall von Bieberstein presents some observations regarding the declaration previously made by the first delegate from Turkey and according to which the Ottoman Government, while pointing out the necessity of using the Red Crescent on its hospital ships, declares that it will continue to respect the Red Cross flag. His Excellency Baron Marschall von Bieberstein is convinced that by reason of the aforementioned declaration of his Excellency Turkhan Pasha, the German Government will find no obstacle in the way of recognizing and, if necessary, of protecting the hospital flag of the Ottoman Government the same as that of the Red Cross.

But he remarks that at the end of his declaration the first Ottoman delegate reserved the right to propose the insertion of an article relating to the right on

¹ Annex 39.

the part of the Ottoman Government to choose and use a special flag. By reason of the difficulties which would attend the necessary modification of the previous conventions, he requests the first delegate from Turkey not to act on his request for the insertion of a special article and to confine himself to his declaration.

[559] His Excellency **Turkhan Pasha** explains that he simply desires to secure reciprocity, and that he expects from the Conference a solution calculated to satisfy his Government.

The President takes note of the declaration of the Ottoman delegation.

His Excellency **Samad Khan Momtas es Saltaneh** makes the following declaration of the Persian delegation:

I also think, as his Excellency the first delegate from Germany just said, that there is no reason for the Conference to modify the previous Conventions; but in this connection I deem it useful to recall the fact that Persia, finding herself in the same circumstances explained by his Excellency the first delegate from Turkey in his declaration (which is backed by his Excellency Baron **MARSCHALL**), had to make reservations regarding Article 18 when she signed the Geneva Convention of 1906.

As I had the honor to explain last year, as delegate from my country to the Conference for the revision of the Geneva Convention, the difficulties in the way of using the Red Cross as the distinctive sign for hospital ships do not arise from the religious idea of the cross, which is venerated itself, but from historical considerations. It is in order to insure efficient protection to these ships, which is the main object we are all pursuing here, that it is proper, as his Excellency Baron **MARSCHALL** has just demonstrated so well, to be as liberal in regard to the use by Persia of the Lion and the Red Sun on a white background on her hospital ships, as in regard to the use of the Red Crescent by Turkey.

His Excellency Mr. **Carlin** deems it his duty, on behalf of the Swiss delegation, to make a remark and a reservation in regard to the declarations which have just been made. He remarks that in accordance with the precise terms of Article 18 of the Geneva Convention of July 6, 1906, no religious significance is attached to the emblem of the Red Cross, this having been unanimously decided at the last Geneva Conference and also recognized by China in the communication made by her delegation at the plenary session of the Third Commission on June 24.

His Excellency Mr. **CARLIN** reads Article 18 of said Convention, worded thus:

Out of respect to Switzerland the heraldic emblem of the Red Cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

He adds that it is evident that the declarations of the Turkish and Persian delegations can relate only to maritime war and can not in any wise affect the Conventions of 1864 and 1906. But he says that it is nevertheless true that it is a question here solely of the adaptation of the principles of these Conventions to maritime warfare and that one of those principles—unanimously admitted, with the exception of Persia, by the Conference of 1906—is the adoption of the Red Cross as the *sole* sign.

Having made these remarks, and in view of the effect which these declarations might have on the Conventions of 1864 and 1906, his Excellency Mr. CARLIN must formally reserve the right to define the attitude of his Government still more precisely when Articles 5 and 5a of the German proposition come up for final discussion and when he has received further instructions from the Federal Council.

His Excellency **Samad Khan Momtas-es-Saltaneh** observes that he was permitted to sign the Geneva Convention of 1906 in spite of the reservations which he made in regard to Article 18, and that there is therefore no necessity of reverting to this question.

[560] The **President** expresses the opinion that this discussion may be usefully resumed at the time of examination of the Ottoman proposition if it is presented, or in connection with Article 5. He thereupon reads Article 5b (new),¹ which ought to be reserved owing to its connection with Articles 3 and 5.

He then reads Article 5c (new).

Rear Admiral **Siegel** thinks he ought to explain, in order to prevent any misunderstanding, that the first part of this article does not relate to the case in which there is a combat between two vessels. The infirmary is a part of the vessel and cannot be particularly respected or protected against the risk run by the vessel itself. It is a question only of the case in which a vessel falls into the hands of the enemy by surprise.

His Excellency Sir **Ernest Satow** infers from this explanation that there would be advantage in giving this provision a rewording in order to elucidate its meaning.

Mr. **Louis Renault** shares this opinion.

His Excellency Mr. **A. Beernaert** proposes that the new draft be drawn up by Rear Admiral **SIEGEL**, who agrees to do it.

The **President** states that the examination of the new text will take place at a subsequent meeting. He thereupon reads Article 5d (new).²

His Excellency Sir **Ernest Satow** observes that the words "*and sick wards of vessels*" appear to have been inserted by way of analogy with Article 7 of the Convention of 1906. He proposes that these words be omitted as being useless, for it cannot be imagined that the nurses or other persons employed in the infirmaries of the vessels can commit acts injurious to the enemy.

Rear Admiral **Siegel** sees no objection to making this omission.

The **President** consequently reads Article 5d as modified, and adds that as there is no opposition this article will not come up again for discussion. He then passes on to article 5e.

Mr. **Louis Renault** observes that the new provision which has just been read seems to be for the purpose of reproducing the provisions of the Convention of 1906, he admits the spirit of the new proposition, but he thinks it goes too much into details which hardly apply to the operations of maritime war. It would be preferable in his opinion to condense the provisions of Article 5e into a more general formula, and he believes it will be easy to reach an understanding in this regard with the authors of the proposition.

Rear Admiral **Siegel** declares that he willingly agrees that a rewording shall be made.

¹ Annex 39.

The **President** consequently reserves this article, which will be submitted to a new examination. He thereupon reads Article 6 of the Convention of 1899¹ and then Article 6 as modified by the German proposition.²

He observes that paragraph 2 of the German proposition might constitute a special article.

Mr. Louis Renault thinks that this provision might normally be embodied in Article 9.

A discussion then follows regarding the exact content of Article 6 as amended by the German proposition; it is recognized that the new article [561] ought to be composed of Article 6 of the Convention of 1899 interpolated between paragraphs 1 and 2 of Article 6 of the German draft.

Mr. Max Huber asks for some explanations in regard to the new wording of Article 6, which appears to be based on Article 5 of the Geneva Convention of 1906. He asks whether the wording in question is for the purpose of enlarging the sense of the said Article 5. Is it a question of a *right* or a *privilege* (option) on the part of the belligerents?

After an exchange of views and with the consent of Rear Admiral **Siegel**, the **President** explains that any idea of a right of requisition should be discarded.

His Excellency **Mr. A. Beernaert** insists that Article 6 shall be subjected to a careful revision; he takes the liberty to point out the obscurity of the first paragraph; can the special protection and immunities which it mentions depend on the will of the belligerents? This would appear to be inadmissible. It must be remembered that this is only a first reading.

His Excellency **Mr. van den Heuvel** makes some observations in regard to the apparently restrictive nature of the respective provisions of the paragraphs of the German proposition. It would not be right, for instance, to exclude from the benefit of special protection and immunities the hospital ships which spontaneously offer their assistance to the sick and wounded.

Rear Admiral **Siegel** explains that it is understood that these advantages shall accrue to both categories and he admits the utility of a rewording.

His Excellency **Sir Ernest Satow** asks whether the special protection and immunities are, according to the idea of the authors of the proposition, to be granted by both belligerents or only by the interested one.

Rear Admiral **Siegel** answers that it is a question of immunities to be granted by the adversary.

His Excellency **Mr. Léon Bourgeois** observes to him that this discussion appears to be due to a slight misunderstanding. There can be no doubt but that, whatever be the circumstances under which the hospital ships have been assigned to their mission, general rules ought to establish the immunities which they are to enjoy. These immunities ought not to depend on the will of the belligerents, and it is for the Convention whose provisions are now under discussion to determine them.

Rear Admiral **Siegel** acquiesces in this view.

Mr. Louis Renault says that the wording of Article 6 (new) was certainly inspired by the corresponding article of the Geneva Convention, which mentions appealing to the charitable zeal of the inhabitants. Now this peculiar situation of land warfare has no exact equivalent in naval war.

¹ Annex 38

² Annex 39.

The **President** consequently declares that the examination of Article 6 (new) is reserved.

His Excellency Vice Admiral Jonkheer Röell remarks that paragraph 3 of this article does not appear to him either easy to apply or very humane and he consequently proposes its omission on behalf of the Netherland delegation. Besides, he proposes some additions.¹

Mr. **Louis Renault** declares that while he does not wish to go into a thorough discussion of the proposition of the delegate from the Netherlands regarding the third paragraph of Article 6, he deems it his duty to observe that the effect thereof is to raise a very big question. It is not only Article 6 (final part) that is involved, but also all of Article 9.

[562] The **President** observes in this connection that it was in the same spirit that he had suggested that paragraph 2 of the proposed amendment should constitute the subject-matter of a special article. He repeats that Article 6 will be reserved and asks whether it is proper to pass on to Article 7.

His Excellency Sir **Ernest Satow** declares that at the time of the debates in the Conference of 1899 the British Government did not think that it could accept a proposition similar to that contained in the third paragraph of Article 6 of the German draft, and that, without further instructions from the Government, the British delegation could not adopt this paragraph.

The **President** observes that by reason of the lateness of the hour it would perhaps be well to postpone the further reading of the proposition until a subsequent meeting.

His Excellency Mr. **A. Beernaert** asks some additional explanations in regard to Article 3 of the German proposition: Does a hospital ship necessarily become belligerent?

Rear Admiral **Siegel** states that in his opinion the ship in question remains neutral, but is placed in the service of the belligerent during the action.

The **President** asks the opinion of the subcommission in regard to the order of the day of the next meeting. Should the discussion of the reserved articles be begun at once or not until an understanding has been reached? In the latter case the reading of the articles of the Convention of 1899 might be continued.

His Excellency Mr. **Léon Bourgeois** expresses the opinion that it would be desirable to continue this reading. The discussion to which it gave rise in regard to the first articles has already furnished useful elucidations regarding different views, and it will certainly be the same with the following articles.

The **President** declares the meeting adjourned at 2:30 o'clock.

¹ Annex 40.

[563]

SECOND MEETING

JULY 9, 1907

His Excellency Count Tornielli in the Chair.

The meeting is opened at 10:30 o'clock.

Annexes 47, 44, and 48 have been printed and distributed among the delegates.

The **President**, upon opening the meeting, makes the following communication regarding the minutes of the meeting of July 2:

GENTLEMEN: You have had an opportunity to examine the proofs of the minutes which were distributed several days ago. I think therefore that there is no need of reading them.

I have received in this connection a request from his Excellency Mr. **CARLIN** to make a rectification.

In the historical sketch of the Convention signed last year at Geneva, which I gave at the beginning of the meeting, an error crept in. I said that on July 6, 1906, the thirty-three articles of which that Convention is composed had been signed by all the nations except China, Great Britain and Japan. Our very distinguished colleague, the first plenipotentiary of the Swiss Confederation, remarked to me that there was an error and that these three nations had signed the Convention the same as the others. Great Britain is even one of the Powers which have already ratified it.

As a matter of fact I found out that the three nations in question, to which Persia ought to have been added, had signed the thirty-three articles of the Convention on July 6 of last year although they did not approve them entirely. However, their reservations regarding certain articles were of little importance from the standpoint of the reasons which led me to present to you the historical sketch of the international act in question. I asked our secretariat general to kindly correct the proof of the minutes of July 2 in this sense.

The **PRESIDENT** thereupon asks whether there are any other remarks to be made on the minutes.

As no observation is made in regard to the minutes, they are adopted with the rectification just mentioned.

[564] The **President** defines as follows the purport of the work now submitted to the subcommission:

I deem it necessary to observe that the program of the Conference invites us to complete this Convention of July 29, 1899, by the adaptation, if necessary, of new principles of the Geneva Convention of 1906 to maritime war.

It is self-evident that we are not expected to revise the existing Convention, which has neither expired nor been denounced. It is in full force. If the changes and additions proposed do not meet your approval, the articles of the Convention of 1899 will remain as they are, and there is no reason for confirming them by a new approval. I believe that we are fully agreed on this point.

The **PRESIDENT** consequently proposes to resume the reading of the German proposition (Article 7),¹ but he first asks the French delegation at what place its propositions are to read.

Mr. Louis Renault (reporter) states that the proposition which constitutes annex 41 should be placed between Articles 9 and 10 and that that which forms annex 42 should be placed in Article 10, the restoration of which it demands.

The **President** reads Article 7 of the Convention of 1899² and then the modification proposed by the German delegation.

Mr. Louis Renault presents some explanations on this subject.

He remarks that the question itself is not one of very great importance. It was subjected to a quite lively discussion in 1899; it was asked whether military surgeons falling into the hands of the enemy ought to receive pay, and the question was decided unanimously in the affirmative. The only difficulty was in finding what should be allowed them. Should it be that received by them in their own army or on the contrary that allowed in the same grade by the army capturing them. An intermediate system might also be conceived. Last year, at the time of the discussion of the new Geneva Convention, the speaker had proposed the adoption of the system of 1899. The contrary rule prevailed.

For purposes of simplification, **Mr. LOUIS RENAULT** proposes to the subcommission to adopt for maritime war the same provision as for land warfare, which provision was accepted by 36 nations, although he himself is in favor of the opposing system on general principles.

The **President** asks whether there is no opposition to the amendment proposed to Article 7. He finds that no one is opposed thereto.

He thereupon reads Article 8 of the Convention of 1899² and the proposed amendment.¹

There is no opposition.

He then reads Article 9 and the amendment relating thereto.

His Excellency Vice Admiral Jonkheer Rœll makes the following declaration in this regard:

I have the honor to make known on behalf of the Netherland delegation, that in view of the French proposition to restore in the Convention to be prepared Article 10 of the Convention of 1899, which proposition was indorsed by Rear Admiral SIEGEL, and in view of paragraph 5 of Article 2 of the Geneva Convention of 1906, with which our amendments are not fully consistent, we withdraw our propositions in regard to Articles 9 and 10, under reservation of the acceptance of the French proposition³ to restore Article 10.

[565] The **President** takes note of the withdrawal, on the part of the Netherland delegation, of its amendments to Articles 9 and 10 in case the French proposition regarding Article 10 should be adopted.

Mr. Louis Renault presents, regarding Articles 6 and 9, some observations which appear to him to be rendered necessary by the reservations made at the last meeting by their Excellencies Vice Admiral Jonkheer RÖELL and Sir ERNEST SATOW.

In 1899 it was asked what should be the fate of the sick, wounded, and

¹ Annex 39.

² Annex 38.

³ Annex 42.

shipwrecked. They may, as a matter of fact, be in very different situations: on hospital ships of the State, on hospital ships of national or neutral relief societies, or on merchant vessels of hostile or neutral nationality. There has been much discussion on this point, and very different solutions have been introduced into the additional articles of 1868. After mature reflection, we agreed to base our action on a very simple principle: A belligerent who duly has in his possession combatants of the adversary has a right to make them prisoners of war; if the combatants are sick or wounded, it is his duty to care for them. It is only necessary to apply this principle to the various cases which may arise: A cruiser meets a hospital ship (*bâtiment hôpital*) or a "hospitable" ship (*bâtiment hospitalier*), and has a right to search it and supervise what takes place thereon. It finds sick, wounded, and shipwrecked persons, and has an absolute right to consider them as prisoners. In most cases, as far as the sick and wounded are concerned, it is entirely to the advantage of the cruiser to leave them where they are, for it would have to transport and care for them. But it may also happen that it will be in its interest to treat some of them as prisoners; this is more particularly the case with the shipwrecked persons. It matters little on board of what vessel these sick, wounded, or shipwrecked persons are found, provided they are duly in the possession of the enemy. This is the case whenever a belligerent cruiser meets on the high seas any vessel other than a neutral war vessel. The rule stated in the amendment proposed by the German delegation (third paragraph of Article 6),¹ arises in my opinion implicitly from Article 9: I therefore make no objection as to the substance thereof, and I willingly consent to seek how we might state more clearly what to me is the truth.

The provision according to which a cruiser may demand the surrender of the sick, wounded, and shipwrecked persons taken on board a neutral vessel has been criticised as being contrary to humanity. It is, however, the necessary counterpart of the immunity granted to these vessels. Let us stop to think that in the absence of any provision the cruiser might claim the right to seize the vessel as rendering a non-neutral service to the belligerent whose wounded it has gathered up; this would not be without precedent. The belligerent, for the sake of humanity, consents not to avail himself of his rights in their full rigor, but this on condition that such a concession shall not jeopardize his military interests. Now the latter would be injured if the persons gathered up were permanently to be exempt from his action. A protest is made in the name of humanity, but humanity would on the contrary have to suffer if the solution defended by the Netherland amendment were to prevail. The belligerents would not readily permit, on the scene of hostilities, the charitable cooperation of neutral vessels if the persons gathered up as a result of such cooperation were necessarily to escape captivity.

There is a single case, not provided by the Convention of 1899, in which the belligerent could not exercise the supervision just mentioned, and that is when the sick, wounded, or shipwrecked persons have been taken on board a neutral war vessel. This is why a special rule is proposed to regulate this case.

It is therefore proper to maintain the principle of the rights of the belligerents to its normal extent. It is not to be supposed that they will utilize it capriciously.

[566] If we were to admit right now the amendment proposed by the Nether-

¹ Annex 39.

land delegation, we should be modifying the Convention of 1899 in a way which would render it unacceptable to the maritime Powers.

It would be preferable, however, to place at the head of Article 9 the German amendment which constitutes the subject-matter of the third paragraph of Article 6.

Rear Admiral Siegel states that he fully agrees with what Mr. LOUIS RENAULT just said.

The President states that consequently the amendment proposed to Article 6 disappears; its text, or a similar text prepared by the committee of examination, will be placed at the beginning of the present Article 9, which he then reads.

His Excellency Sir Ernest Satow recalls that at the last meeting he stated that without further instructions the British delegation could not accept paragraph 3 of Article 6, as proposed by the German delegation. He has not received these instructions.

The President reads Article 10,¹ as well as the amendment of the Netherlands delegation in regard to this article.²

His Excellency Vice Admiral Jonkheer Röell declares, on behalf of the Netherlands delegation, that he withdraws his amendment.

The President thereupon reads Article 10a of the German amendment.³

His Excellency Mr. A. Beernaert asks whether there is any use of maintaining the word "cremation" in this article.

Rear Admiral Siegel observes that this contingency might arise in case of disembarkment.

The President thereupon reads Articles 10b, 11, 11a, 11b, and 11c.³ The first three articles give rise to no observation. In regard to Article 11c, his Excellency Sir Ernest Satow observes that the Commission has not yet passed on the question of the distinctive signs as mentioned in Article 5.

The President states that it is understood that the expression in Article 11c relates to the distinctive signs which are to be finally adopted by the sub-commission.

Upon an identical remark by his Excellency Mr. A. Beernaert relative to the word "*burial*," Rear Admiral Siegel gives a similar explanation.

Chevalier von Weil proposes, in the name of the Austro-Hungarian delegation, that in both Articles 11b and 11c of the German draft the words "*the signatory Governments*" be supplanted by the words "*the signatory Powers*."

This slight modification in wording is necessary for reasons connected with the constitutional law of the Austro-Hungarian Monarchy.

No opposition is made to the change asked.

Chevalier VON WEIL suggests on the other hand that the word "*military*" be stricken out in the fourth line of Article 11c of the German draft, so that the expression "*their criminal laws*" would comprise the whole of the penal legislation of a country without making any distinction between the military and the civil penal code, for it might at any time happen that questions of the nature of this one would not only be provided for in the military but also in the civil penal legislation. Thus, the proposed new Austrian penal code contains pen-

¹ Annex 38.

² Annex 40.

³ Annex 39.

[567] alties against pillage committed against the dead or wounded on the field of battle.

Brigadier General de Robilant fears that the omission of the word "military" may cause a misunderstanding.

Military laws are exceptional laws, and when their use is not expressly mentioned, recourse is had to the ordinary law, that is, to the common law; and the insufficiency of the latter would compel the Government to resort to the special measures referred to in this article. This is what must be indicated.

His Excellency Mr. van den Heuvel is in favor of admitting the change proposed by the Austro-Hungarian delegation. When criminal laws are mentioned, without specifying that it is a question of special criminal laws, notably military criminal laws, it is understood that all existing criminal laws are meant, without distinction among them, whether they be general or particular. The text speaks of insufficiency of "criminal laws," and there is no insufficiency in the legislation if measures are provided either in the military criminal laws or in the general criminal laws.

The President, agreeing with a suggestion by Rear Admiral Siegel, proposes that the examination of this question be entrusted to the committee of examination.

He thereupon reads Article 11d,¹ which gives rise to no observation.

He passes on to Articles 12, 13, and 14 (text of 1899).²

Mr. Louis Renault states that there is reason for interpolating a provision between Articles 12 and 13, there being a sort of gap in the present text; the purpose of this provision would be to indicate that the Governments which signed the Convention of 1899 and which do not sign the new Convention will continue to be bound by the Convention of 1899. He is of opinion that the text of this article might be found by the committee of examination, which would at the same time be charged with the preparation of the text of the new Convention as well as of an explanatory report.

His Excellency Mr. Nelidow asks what would be the future relations between the Powers which had or had not ratified the Convention.

Mr. Louis Renault explains that the Powers will naturally have their relations governed by the conventions which they have in common. Two powers signed the Convention of 1899, while one of them signs the Convention of 1907 and the other does not; the Convention of 1899 will be the one which remains in force with regard to their relations.

Before proceeding to organize the examination committee, the President asks the British delegates kindly to express their views in regard to the distinctive signs referred to in Article 5.

Captain Ottley expresses himself as follows:

The British delegation, while being entirely in accord with the German delegation as regards the necessity of safeguarding as far as possible the hospital ships during the course of the military operations; nevertheless deems it necessary to frame some objections to the amendment proposed to Article 5 concerning the three lights, green, white, and green, which these vessels are to carry.

In the first place we maintain that, in case hospital ships and a belligerent fleet should be navigating in concert at night, it is unreasonable to suppose

¹ Annex 39.

² Annex 38.

[568] that any admiral commanding a fleet would permit those vessels to carry the afore-mentioned lights, for they would indicate the position and his route to the enemy.

Rear Admiral **Siegel** replies that the intention of the German Government is simply that some signal shall be hoisted on the hospital ship at night. The German delegation is willing to accept any other proposition which would result in creating a distinctive sign. According to him, this question might be reserved to the committee of examination.

His Excellency Sir **Ernest Satow** also thinks that the committee of examination might find a solution in this regard.

His Excellency Mr. **Nelidow** does not think that it is a mere question of wording here. He recognizes the difficulty under ordinary circumstances, but he proposes that the distinctive lights in question should be lighted during battle at night.

His Excellency Mr. **Keiroku Tsudzuki** declares that the Japanese delegation shares the views expressed by the British delegation and that it requests the maintenance in its present form of Article 5 of the Convention of 1899; as a matter of fact hospital ships can always make their inoffensive character known with certainty at night without resorting to signals or distinctive signs such as those proposed by the German draft. The use of lights as therein mentioned would give rise to abuses the effect of which would diminish their practical value.

After this exchange of views, the **President** proposes to entrust the settlement of this question to the committee of examination.

He consequently proposes the organization of this committee, which might be composed of the bureau of the subcommission, to which would be added the delegates who have taken part in the discussion; that is to say, the delegates from Germany, Austro-Hungary, Belgium, France, Great Britain, Japan, the Netherlands, and Russia.

His Excellency Mr. **Carlin** asks that the Swiss delegation be represented on the committee of examination, inasmuch as it is a question of adapting texts of Conventions which were concluded on Swiss territory and under the auspices of the Federal Council. He adds that the Swiss delegation moreover also took part in the discussion.

After acquiescing in this desire, the **President** expresses the opinion that the Ottoman delegation and the Persian delegation be also represented on the committee, in view of the possible discussion of the question of the Ottoman hospital flag. It will be the same with the Chinese delegation, at the request of Colonel **TING**.

The **PRESIDENT** thereupon proposes that the examination committee meet on the same day at 5:30 o'clock. These propositions are adopted.

The meeting adjourned at 11:30 o'clock.

[569]

THIRD MEETING

JULY 27, 1907

His Excellency Count Tornielli presiding.

The meeting opens at 10:30 o'clock.

The minutes of the preceding meeting are adopted.

The President delivers the following address:

GENTLEMEN: The program of the Conference imposes upon us the duty of taking up at to-day's meeting a question which, because of the light in which it has been viewed up to the present time, appears to be one of the most complex and most difficult to settle.

In this program it is set forth as follows: "Framing of a Convention relative to the rules applicable to belligerent vessels in neutral ports." Is this statement so restrictive as not to admit of a certain amount of latitude in its interpretation? I cannot think so.

The Russian circular of 1906 invited the Powers to agree to establish "for maritime warfare . . . fixed rules in keeping with the exigencies of the rights of belligerents and the interests of neutrals."

As a result of our debates, we shall see whether this expression ought not to be inverted, and whether our due regard for the demands of public opinion, always and everywhere on the alert, ought not to convince us that to-day the rights of neutrals takes precedence over the interests of belligerents. Is it not a superannuated legal conception, bequeathed to us by the remote past, which fails to recognize the fundamental right of neutrals not to be disturbed at home by the quarrels of others; a conception which, instead of recognizing first of all and everywhere that the State has the absolute right to make laws to suit itself on all subjects, would sanction a series of obligations for neutrals, arising neither from an act committed nor from an act omitted, neither from a serious offense nor from a petty offense? It is now sought to place these obligations on a conventional basis by the introduction of uniform rules to be mutually observed by the contracting States. It is indeed a useful thing to make certain common rules more precise, but only on condition that in seeking an agreement upon this subject the fact is not lost sight of that the legislative independence of the several countries must not be unduly hampered.

[570] The logical deductions from the immutable principle of national sovereignty seem considerably to simplify our task. If they prevail, our only reply to the question that has been put to us could be included in four precepts, upon which it should not be difficult to reach an agreement.

These precepts may be formulated thus:

(1) Mutual recognition by the contracting Powers of their legislative independence in the matter of respect for neutrality.

(2) Impartial application to all belligerent parties of the laws which the several States have enacted.

(3) Mutual renunciation by neutrals of the right to introduce changes in their national laws in this respect while a state of war exists between two or more contracting Powers.

(4) Absolute duty of belligerents to respect the laws of neutrals.

I should like to see the work which we are about to undertake follow these lines. If we are able to advance a little in this direction, our time will not have been wasted and what we accomplish will be in the interest of progress.

Four proposals have been submitted to us: the proposals of Great Britain,¹ of Spain,² of Japan,³ and of Russia.⁴

The proposals of the last three Powers appear to constitute, in the mind of their authors, the course which belligerents must follow when in neutral waters.

Great Britain has presented to the Conference a much more extensive draft Convention. It comprises not only the rules which should govern belligerent vessels in neutral ports and waters, but also other provisions concerning the rights and duties of neutral States in case of naval warfare.

In the remarkable work which our eminent reporter, Mr. RENAULT, has prepared for us, for the grouping of the questions that spring from the four projects which we have to examine, these special provisions of the British proposals have been set aside. Does this mean that our subcommission is not competent to examine them? As I have already said, we should, in my opinion, be allowed a certain latitude in determining the limits of our work.

Of the five articles of the British project, which our reporter has not grouped among the sixteen questions which he proposes that you examine, the first may be reserved, for it is connected with the provisions relating to the declaration of war, which the Second Commission is considering. We are all, I believe, of the opinion that the rights and obligations of neutrals do not begin until they have been notified of the existence of a state of war. But this applies to land as well as to naval warfare, and consequently it would seem that it should be handled by the Commission to which this particular question has been assigned. On the other hand, Articles 3, 5, 7, and 31 proposed by Great Britain embrace matters which are connected, albeit indirectly, with the regulation of naval warfare. Must we therefore refrain from considering them? I do not think so. Some of these provisions bear a real relationship to others which we are assuredly charged to examine. They are, as it were, supplementary thereto and appear to follow from the declarations contained in the treaty concluded at

Washington on May 8, 1871, between the United States and England. By [571] this pact the high contracting parties agreed that the rules which they had laid down should continue to be observed by them in future, and they bound themselves to bring them to the attention of other maritime Powers, inviting them to adhere thereto. This was not done. Great Britain would not appear to be overstepping the limits of her rights in laying these rules before the Conference and in asking the Powers to adhere to them.

I would propose therefore that Articles 3, 5, 7, and 31 of the English project be reserved for the end of our discussion.

¹ Annex 44.

² Annex 47.

³ Annex 46.

⁴ Annex 48.

On the conclusion of his address, the PRESIDENT declares the general discussion open.

His Excellency Sir Ernest Satow takes the floor and speaks as follows:

GENTLEMEN: I believe that I am voicing the general sentiments of this assembly in offering our sincere thanks to our reporter, whose great ability and assiduous labor enable us at the present moment to compare in an intelligent manner the proposals submitted by the Japanese, Spanish, British and Russian delegations. I congratulate myself that I agree with most of the observations just made by his Excellency the President of the subcommission.

My government has deemed it its duty to propose to the Conference the draft regulations which have been filed in its name, because it considers that it is of the utmost importance to define precisely the treatment which a neutral State may apply to belligerent vessels in its ports and territorial waters. We owe it to neutrals to indicate to what extent they will be permitted, in time of war, to give shelter to and to provision vessels of one of the belligerents without exposing themselves thereby to justifiable complaint on the part of the other belligerent. Likewise it is no more than just to state the treatment which belligerents will have the right to expect from neutrals. Uncertainty in this respect can only give rise to misunderstandings and disputes. Now, it is indisputable that uncertainty prevails with regard to this matter. We need only consult the texts to convince ourselves of this. Thus, to cite an instance, it is stated in a number of works on international law that the so-called 24-hour rule is universally recognized, while we know that several States do not recognize this rule and do not consider themselves bound to observe it.

In so far as the form of the British project is concerned, we think that we should not lose sight of the fact that the neutral has a duty to perform with respect to both belligerents, and that the treatment applied to a belligerent vessel in a neutral port concerns not only the relations of the neutral State with the Government to which the vessel belongs, but also the relations of that State with the other belligerent. Hence regulations which should include only the duties of belligerents would not fulfil the proposed purpose; they should also mention the duties of the neutral.

The draft Convention which the British delegation has submitted to the Conference is merely a summary of the rules which the British Government, as a neutral, considers itself bound to observe in time of war. It therefore contains only provisions which can, to our own knowledge, be applied and which produce satisfactory results.

It is clear, however, that we cannot expect a State to compel its citizens to observe rules and conform their conduct to restrictive measures which are not recognized by other Powers as equally binding upon them. Likewise, if we should wish to facilitate the neutral's performance of his duty and the [572] observance of regulations which, in time of war, place a restraint upon his freedom of action and hinder his commerce, it is incumbent upon us to recognize that belligerents are bound to respect the sovereign power of neutrals. Though they have duties to perform, neutrals none the less have rights to be respected, and it is for the purpose of insuring to neutrals respect for their rights that we have drawn up Article 2 of our draft Convention, which very naturally is placed at the head of the *questionnaire* as the expression of the underlying idea of this branch of international law.

Some of the articles of our project deal with problems outside of the general question of the treatment to be accorded belligerent vessels in neutral ports. We have deemed it advisable to incorporate them in our project, so as to present to you a complete exposition of the rights and duties of neutral States in time of naval warfare as we understand them. You will find at the bottom of the first page of the document which you have before you the text of the articles which

are only indirectly related to the question we are discussing. The first of these articles that are here separately printed is connected with the French proposal concerning notification to neutrals of the existence of a state of war, which, in our opinion, should form the subject of a separate chapter, since it has a bearing upon land warfare as well as upon naval warfare. Articles 3 and 31 are generally recognized as principles of international law. Article 20 has already been unanimously adopted by the Conference in the new Convention adapting the Geneva Convention to naval warfare. Articles 5 and 7 are based upon a rule which Great Britain and the United States have long observed, to the effect that it is contrary to neutrality to permit a belligerent to increase his fighting forces within the jurisdiction of a neutral. We believe that the justice and justification of this article cannot be contested, and we hope therefore that the two articles will not fail to be adopted by the Conference and thus to find a place among universally recognized principles of international law.

If the Commission is of the same opinion, it is to be hoped that there may be an opportunity to consider in detail the articles which are now excluded from our discussions. It would seem to be the more necessary not to lose sight of these questions, since the circular of the Imperial Government of Russia convoking a Second Peace Conference expressly mentions the necessity of laying down definite rules correlating the rights of belligerents and the interests of neutrals, as well as taking into account the *vœux* expressed by the First Conference, especially in the matter of the rights and duties of neutrals.

His Excellency Mr. Tcharykow, in the name of the delegation of Russia reads the following declaration:

Mr. President: In placing upon the program of this Conference the question of the status of belligerent ships in neutral ports, the Russian Government has responded to a need which has long been felt—and is still felt—of an international agreement on the most important points in connection with the rights of neutrals in naval warfare.

This need is expressed with a unanimity which we are glad to note in divers proposals that are before the subcommission. These proposals express, in effect, the demand that the agreement to be made shall “relieve neutrals of [573] onerous and useless responsibility, that it shall prevent misunderstandings resulting from differences in practice,” that it shall sanction “respect on the part of every belligerent for the sovereign rights of a neutral State,” a point of view which his Excellency Sir ERNEST SATOW has just confirmed in his speech; finally, that its basis shall be “respect for these immutable rights.”

To meet this need and this general expectation, the delegation of Russia deems it desirable first of all to determine the exact limits within which a neutral State must hereafter exercise its right in this respect.

The establishment of such limits by the conclusion of a Convention *ad hoc* would be of considerable advantage not only to neutrals but to belligerents as well.

To the latter an international agreement, even though it did not fulfil the maximum of their desire, might seem to be preferable to the continuance of the absolute uncertainty which now exists.

As for neutrals, the conventional regulation of the treatment of belligerent ships in their ports and waters would put an end to any misapprehension with respect to the legality or impartiality of the action that they might take.

In the second place, the delegation of Russia reserves the right to propose to the subcommission, when the general discussion which begins to-day has progressed a little farther, the insertion of the following stipulation in the projected agreement:

The exercise by a neutral State of the rights laid down in this agreement, within the limits therein indicated, can under no circumstances be considered by one or other belligerent as an unfriendly act.

With respect to the special points covered by the *questionnaire* distributed among us, the delegation of Russia hopes that the exchange of views which is to take place will show a spirit of conciliation and agreement that will make it possible for a committee of examination to draw up a text in response thereto that will satisfy us all.

Permit me, gentlemen, to add that the four points which our eminent PRESIDENT has just formulated seem to the delegation of Russia extremely well calculated to bring about the establishment of the unanimous agreement which we desire.

Mr. Vedel says that the Danish delegation entirely concurs in the declaration contained in Article 1 of the Russian project to the effect that respect for the immutable rights of sovereignty of neutral States must be the basis of the system to be applied to belligerent vessels in neutral waters

Although it is scarcely likely that this principle will be disputed, it is nevertheless important to bring it out in relief in the Convention which we have before us and which will, in all probability, not fail to impose numerous obligations upon neutral States.

In general, it would be well, in our opinion, to write into the Convention the rights as well as the duties of neutrals, and to draw up articles, where it can be done, in such a way that orders and prohibitions shall be addressed to belligerents as well as to neutrals.

The delegation of Denmark desires that the Convention shall adopt the principle of treating neutral States with consideration, so far as possible, and it ventures particularly to recommend that obligations out of proportion to their means and resources be not imposed upon neutral maritime Powers.

This last remark is occasioned by the Japanese project, Article 7 of which enjoins neutral States to take all measures necessary to insure the application of the foregoing rules. If I have correctly understood this article, it demands categorically that the neutral State prevent any violation of neutral territory by a belligerent. This demand would, however, be equivalent to imposing upon small

maritime Powers—for the possible defense of their territory—armaments [574] equal to those of the biggest navies in the world placed on a war footing. This would be demanding of them the impossible.

In this same connection, the Danish delegation ventures to mention the advantage there would be in making a distinction in the Convention between the status of belligerent vessels in neutral ports and roadsteads, and their status in other territorial waters. This distinction was recently observed by Denmark, in concert with Sweden and Norway, during the last great naval war.

For small maritime Powers, whose territorial waters are very extensive or at least relatively extensive, it would probably be impossible and would in any event require a navy well in excess of the resources of the country to exercise a really effective control outside of their ports and roadsteads in the matter of

observance by belligerents of certain of the rules which we are to discuss here. In some waters the neutral State will be able to remedy the matter by barring the entrance with mines, but the use of this means is by the very force of things limited to relatively small areas of water, and in so far as Denmark in particular is concerned, the use of mines to facilitate control is considerably limited because of the free navigation of the three maritime passages between the Cattegat and the Baltic.

As a result of the experience of the countries of northern Europe, the Danish delegation ventures to express the desire that the distinction I have just mentioned may be accepted in the Convention.

It reserves the right to propose amendments later on when the details of the projects are discussed.

Mr. de Beaufort brings the following considerations to the subcommission's attention.

The delegation of the Netherlands wishes to observe that the question which is on the day's order of business is of the utmost importance to its Government, which in recent wars has observed the most impartial neutrality, but which, because of the colonies that it possesses in different quarters of the world and of the numerous ports therein, has nevertheless been placed at times in a very embarrassing situation.

The Government of the Netherlands therefore greatly desires that all questions which may arise as a result of the stay of belligerent war-ships in neutral ports and waters may henceforth be obviated by a common agreement, establishing a system sanctioned by the rules of conventional law.

Without taking a stand on all the questions that may come up in the course of our debates, I shall confine myself for the time being to a general observation. It would seem to me, first of all, whatever definitive system may be agreed upon, that the rules defining this system should be precise and clear and should not leave a loophole for any future ambiguity.

The neutral must know what he is expected to do. His freedom of action must not be restricted without legitimate cause. Belligerents must be guaranteed perfect equality of treatment. These are two cardinal rules which must serve as the basis of a just and equitable system.

I wholly concur in the opinion expressed by the Japanese delegation, that the application of these rules must exclude the possibility of misunderstandings resulting from divergent practices, but in order to obtain this desirable result, it will not suffice, in my opinion, to use general terms of more or less vague meaning, such as, base of operations, place of war operations, military purposes of any kind, etc. The delegation of the Netherlands would regret to see such expressions accepted without an explanatory definition, because, as a matter of fact, they admit of several interpretations. If neutrals and belligerents, or even neutrals among themselves are not in agreement as to the real meaning of these words, serious misunderstandings will not fail to arise, and neutrals will find themselves confronted with the same difficulties which it was intended to spare them.

I think therefore that the acts which can be considered as making use of neutral ports and waters as bases for war operations, as observation points, or for military purposes of all kinds, should be specified, as far as possible. It is evident that it is impossible to foresee all possible eventualities; but, on the other

hand, there are cases which arise in all wars and which could be defined and regulated in such a way that the neutral would have no hesitation as to the measures he ought to take. In short, neutrals cannot bind themselves to keep within limits that it is desired to establish if these limits are not distinctly laid out.

I think that I can in a general way support the declarations that have been made by the delegations of Great Britain and Russia, as well as the views expressed by his Excellency Count TORNIELLI, which he has summed up under four heads. Finally, I accept the proposal announced by the Russian delegation, because I am convinced that this proposal implies entire freedom of action for neutrals within the limits of the Convention, on condition that belligerents shall receive absolute equality of treatment, thus excluding the possibility of injuring the interests of one of the belligerents or of favoring the interests of the other by a sudden change in the exercise of the rights defined by a conventional agreement.

His Excellency Mr. Keiroku Tsudzuki reads the following declaration:

The proposal which the delegation of Japan has the honor of submitting to this Commission concerning the treatment of belligerent vessels in neutral waters is founded, in its opinion, upon considerations of great importance.

The progress of civilization and the development of sentiments of justice and humanity make war, as time goes on, more and more the exception in the intercourse of States. Being an abnormal condition, it should be confined within the narrowest limits possible.

There are not at present clear and universally recognized rules governing the relations between neutrals and belligerents with regard to the questions that have been laid before us, and history teaches us that the divergent and frequently conflicting interpretations and practices adopted in the past by different countries have been one of the most fruitful causes of international irritation and recrimination. It would therefore be desirable to remove as far as possible the dangers arising from this state of affairs.

The peaceful acts of neutrals should be respected to the greatest possible extent and as far as is compatible with the recognized rights of belligerents and should be allowed to proceed without being disturbed by war; but in order to insure the result desired, neutrals should see to it, on their side, that their territories and territorial waters are not utilized by belligerents as bases for the carrying on of military enterprises, so as to furnish cause for complaint.

To further the cause of peace by warding off war, to prevent abuse of the hospitality of neutrals by drawing a clear distinction between permissible peaceful acts and prohibited military operations on the part of belligerents in neutral ports and waters, to discourage as much as possible the use of these neutral ports and waters for military purposes by means of restrictions acting in a way as [576] automatic prohibitions, without affecting in any way whatsoever the right and privilege of using these ports and waters as places of refuge and for purely humanitarian purposes, to protect neutrals in the enjoyment of their rights and in the fulfilment of their duties by specifically defining these rights and duties—such is the purpose of the Japanese proposal.

Strict neutrality, without favor or exception, as regards the matter under consideration, that is the system which the Japanese delegates earnestly hope to

see firmly and definitely established in the interest of peace and general tranquillity.

As regards the proposal of the honorable delegate of Russia that the question be referred to the committee of examination after a general exchange of views, we favor this proposal. We hope that the committee will find some common and definitive ground upon which the Commission might base its deliberations.

His Excellency Mr. Hagerup, while concurring in the point of view set forth by the PRESIDENT and in the declarations made by the delegates of Denmark and the Netherlands, desires nevertheless to call the Commission's attention especially to the situation of fact pointed out by the Danish delegation, that is to say, the necessary distinction between neutral territorial waters and ports. This distinction has not only enlisted the attention of the three States of the North, but it has also been observed in the works of the Institute of International Law, which works have undoubtedly inspired the delegations in the elaboration of their projects.

The Institute of International Law in 1894 adopted regulations governing belligerent vessels in territorial waters, and in 1898 regulations governing belligerent vessels in neutral ports.

His Excellency Mr. HAGERUP considers this an excellent distinction and desires to call the Commission's attention to two considerations. In the first place, the boundaries of territorial waters are very uncertain and are determined along very different lines by different States. We might add that the question of straits, which the Institute regulated in connection with territorial waters, is closely related thereto. Now, this question is of the utmost importance to certain countries.

Again, we must take into consideration the fact that there exist, in Norway for instance, territorial waters hundreds of miles in extent, abounding in numerous islands, either uninhabited or so thinly settled as not to admit of the establishment of coast guard stations. How, under these conditions, would it be possible to assimilate a coast-line of this kind to ports where the actions of belligerents can always be watched, and if it is desired to set a limit to the stay of belligerents, how would it be possible to insure observance of the 24-hour limit in territorial waters?

It is therefore clear that it will be impossible at times for a neutral State to assume the burdens entailed by the necessity of seeing that the neutrality of its territorial waters is enforced as strictly as that of its ports.

In short, assimilation of neutral waters to neutral ports is not possible, so that the projects submitted assume a very different aspect with regard to a number of points, according as they are studied from the point of view of the regulation of territorial waters or of the regulation of neutral ports.

Mr. Louis Renault then takes the floor, not as reporter, but in his capacity as a French delegate.

He feels that he must remark first of all that, in so far as the British proposal is concerned, the place assigned in the *questionnaire* to certain [577] provisions does not mean that these articles will not be examined. They have been so placed merely for convenience of discussion and because the provisions do not strictly come within the range of the program for which the *questionnaire* was proposed. Mr. LOUIS RENAULT thanks Sir ERNEST SATOW for his approval of the *questionnaire* and states that that document has not called

forth any objections. Without entering in detail into the questions examined by the previous speakers, he thinks that he ought to present certain general considerations on the subject now under discussion.

It may be noted first of all, as regards the first point of the *questionnaire*, that the three provisions placed in juxtaposition embody a complete answer to the question. In the first place, we see affirmed therein the neutral State's right of sovereignty which, as his Excellency Count TORNIELLI has very justly observed, constitutes the main point. To this right of sovereignty of the neutral State corresponds the belligerent's duty to respect it. That is what Article 2 of the British proposal lays down.

The exercise of the neutral's right of sovereignty, whose source is the common law, must naturally be reconciled with observance by the neutral of the duty incumbent upon him not to take part in hostilities. Now, as a matter of fact, the positive law of nations, as it stands at present, allows neutral States great latitude in regulating the status of belligerent war-ships in neutral ports and waters. This latitude has resulted in giving rise to divergences in the laws of the various countries on the subject, which divergences show themselves in the declarations of neutrality promulgated by neutrals on the outbreak of a war. And that is not all. There have been cases where the same country has not observed the same rules of neutrality in different wars; at times it has even happened that it has changed its rules during different phases of the same war. This shows the very great uncertainty there is on this subject, a very annoying uncertainty, causing misunderstandings, recriminations, and at times calculated to lead to disputes.

Again, it may happen that this or that rule may, under various circumstances, favor one of the belligerents, although it was not made in his behalf. Geographical or military circumstances may create a situation that is to his advantage, without there being any intention on the part of the neutral to favor him. The other belligerent naturally finds this consequence an annoyance and may even be led to lodge a complaint on that score.

From this point of view it would be very beneficial to settle upon uniform regulations which, as they would not emanate from any one State, would be observed the more willingly. This general regulation, which is so desirable, would have the effect of eliminating causes of complaint which might easily degenerate into disputes.

Such is the ideal, if we can hope to succeed in reaching an agreement upon all the points and in concluding a general Convention. But if it were merely possible to reach an agreement upon a few rules, we would thereby have reduced the uncertainty and narrowed the field of possible disputes. It is proper to note, in this connection, that as regards the points upon which it has been impossible to reach an agreement, the fundamental principle would remain intact and the legislative bodies of the several States, as our PRESIDENT has pointed out, would retain all their rights.

The uniform regulation which should be established must needs be based upon certain considerations of a general nature. It must respect the rights of neutral States. As set forth in the Russian program and as demanded by the Japanese proposal, it must endeavor to remove unnecessary heavy responsibilities. It is therefore necessary to avoid rules, the more or less delicate application of which would require strict supervision calculated to give rise to difficulties between

neutrals and one or the other of the belligerents, or at times both of them. [578] We must therefore relieve neutrals of responsibility; but the rules of neutrality must nevertheless take into account the normal conditions and necessities of navigation, so that they may not be influenced by the geographical situation of this or that Power, nor by the interests of this or that belligerent.

Such are the general principles which, in Mr. LOUIS RENAULT's opinion, must guide the subcommission in the examination of the program now submitted to its consideration.

Colonel Ting makes the following declaration:

The delegation of China accepts in principle the draft Convention submitted by the delegation of Great Britain concerning the treatment of belligerent war-ships in neutral ports and waters.

It deems it desirable, however, to make a slight modification in the text of Sections A and B of Article 10 of the British proposal.

Section A. Insert after the words, "there has been installed," the words, "*to its knowledge.*"

Section B. Add to the sentence ending, "by means of auxiliary vessels of their fleet," the words, "*recognizable as such.*"

Lieutenant Commander Ivens Ferraz explains as follows the point of view of the Portuguese delegation in this matter:

One of the greatest injustices of every war is undoubtedly the immense disturbance that it causes to neutral States, the burdens and responsibilities which it lays upon them without any compensation.

Neutrality being the absolute right of all States, we must not lose sight of the extent to which the exercise of this right is surrounded by difficulties and dangers.

If the neutral State is a small State, these dangers become more serious. We may say that the more peaceful and unprepared a State is, the more is it exposed to all kinds of vexations and injuries.

We therefore venture to call the serious attention of the Conference to the undesirability of loading neutral States with obligations which they will not always be in a position to live up to, instead of imposing upon belligerents, who alone are the instigators of and responsible for the state of war, the duty incumbent upon them with regard to neutrals, not only to respect but also to facilitate the exercise of their right of neutrality.

With respect to belligerents, neutrals have primarily rights; with respect to neutrals, belligerents have primarily duties. Such, in our opinion, should be the general rule for our deliberations on this subject.

We therefore give preference to any proposal which tends to facilitate the task of neutrals, while maintaining the duty of the latter to prevent belligerents, by all means in their power, from committing hostile acts in their territorial waters.

*Article 2 of the Japanese proposal*¹

If the two belligerent ships which are simultaneously in neutral waters are a merchant ship and a war-ship, or a small cruiser or torpedo-boat and a big armored ship of war, it is perfectly evident that the merchant ship or weaker war-ship should leave port first, no matter which vessel came in first.

Otherwise the humanitarian purpose of this measure, consisting in avoiding

¹ See annexes 50 and 49.

an encounter or fight, would not be accomplished. If the big armored vessel should leave first, it would only have to wait in the vicinity of the port for the merchant ship or weaker war-ship to come out. The capture or [579] destruction of the latter would be certain, and the neutral State would have given it over to its enemy.

*Article 15 of the British project*¹

A war-ship—let us say, a torpedo-boat—might take refuge in neutral waters, not for the purpose of escaping from a pursuing vessel, but for the purpose of navigating near land, so as not to be seen by the enemy. That would not be sufficient to give the neutral the right to intern it. There must be an engagement in the course of which the vessel seeks and finds an immediate refuge in neutral waters and thus escapes a danger otherwise unavoidable.

Lieutenant Commander IVENS FERRAZ then presents amendments which the delegation of Portugal suggests be made to the British and Japanese proposals.²

Rear Admiral Siegel states that the German delegation has listened with the keenest interest to the declaration of the Russian delegation and the eloquent, elucidating address by our eminent colleague, Mr. LOUIS RENAULT.

It desires to state that in its opinion the principles and views set forth by the Russian delegation and by Mr. LOUIS RENAULT respond to a very justifiable desire and to the conceptions of international law as it now stands and as it has been accepted up to the present time, the definitive regulation of which is desirable. The German delegation believes that an exhaustive study of the explanations given and the principles upon which they are based cannot but greatly aid in bringing about a happy result, and it recommends them to the favorable consideration and approval of this high assembly.

Commander Burlamaqui de Moura states that because of the great importance to Brazil of the question now under discussion, he has prepared a study explaining the point of view of his Government; but he will not read it on account of its length and asks only that it be inserted in the minutes, where the members of the Commission may peruse it.

This is ordered to be done. [The statement of the delegation of the United States of Brazil reads as follows:

As concerns the treatment of belligerent war-ships in neutral ports and territorial waters, we accept, to begin with, the *questionnaire* presented to the Commission, in the form in which it has been drawn up by the committee charged with its preparation from the proposals submitted. We are, moreover, of the opinion that it would be well, in order to avoid delays injurious to the prompt and successful performance of our work, to have a general debate on the question as a whole before discussing it article by article.

We believe it necessary to set forth fully our point of view with regard to the procedure followed up to the present time in the solution of questions raised by this problem and to state at the same time our opinion regarding the different means considered at the present time advisable for bringing about an agreement.

(1) From what has been written on these important problems of international law, it is our conviction, at least at the present moment, that up to now there has been no general principle governing the matter.

There are indeed special principles sanctioned by time-honored traditions,

¹ See annexes 50 and 49.

² See annex 50

which might serve in the study of this delicate question of the admission of belligerent vessels to neutral ports and territorial waters.

[580] But the broad interpretation which it is possible to give them, and which has on occasion been given them, has shown a lack of agreement among the States which have had recourse to certain of these principles and has made manifest the profound changes which they have undergone. This state of affairs justifies the desire of those who are anxious to regulate these questions in a way that is more satisfactory and better adapted to the needs of to-day, which needs made themselves apparent when the attempt was made to apply general principles to the multiple incidents that have arisen in the course of recent hostilities.

Recent wars have shown the necessity for States to provide for and regulate in advance all the difficulties that may arise in this respect.¹

The inviolability of neutral waters, the right of innocent passage, the right of asylum and of replenishing the vessel's coal supply in these waters, all of which questions are included in the *questionnaire*, have undergone, as a result of the changes in armament, the progress in steam navigation, and the extension of the radius of action in hostilities, such an evolution that the old rules no longer meet the needs of the present time.

The French instructions promulgated on these points and until now regarded as sufficient even by the British Government, the English and the American rules, which other nations also have accepted, have, when applied of late, been judged inadequate.

The controversial question of the right of asylum has received various interpretations and has not been sufficiently elucidated up to the present time.

The American authorities, in prescribing departure within twenty-four hours and in ordering, upon the expiration of that period, disarmament and internment until the end of the war of vessels coming into the port of Manila to seek refuge or to make repairs, interpreted the principles in a very different way from the rule followed up to that time. This rule consisted in freely granting asylum without the neutral's incurring any responsibility, so long as he does not give one belligerent any assistance that might be construed as a hostile act against the other.

The Netherlands authorities pursued the same course a little more rigorously, when they interned the cruiser *Tarck*, which, not having sufficient coal to take it to its nearest port or to a neighboring port, asked the Batavian authorities for a supply—and that, knowing it was impossible for the vessel to ship the coal within the customary time limit long adopted by them.²

The voyage of the Baltic Fleet to the Far East was full of incidents pertinent to the same point as well as to the question of supplies in general, particularly as a result of the divergent international practices in the matter of supplying coal to belligerent war-ships in the neutral ports and waters where they stopped. That voyage furnished palpable evidence of the inconveniences resulting from different applications of identical principles.

The great freedom and excessive facilities formerly existing in this matter have been reduced to simple aid accorded vessels in need. Thus, we have to-day reached the conception of a new theory according to which belligerent vessels are refused the right, except perhaps in case of distress, of taking on coal in neutral waters.

Even the incontestable right of passage through the maritime territories of

¹ Verraes, *Les lois de la guerre et la neutralité*, Brussels, 1906, vol. ii, p. 79.

² *Times*, weekly ed., July, 1905.

neutral States, under the necessary precautions and prescribed conditions, has already suffered more and more rigorous restrictions, some persons even wishing to prohibit it altogether.

[581] By reason of all this lack of harmony, which we have pointed out, concerning this serious question of the treatment of belligerent ships in neutral ports and territorial waters, we think that there should be established immediately new fixed and definite rules covering all these points, so as to avoid in future the growth of the present tendency of hampering the just application of all these rules with restrictions.

Indeed, the most eminent jurists are frequently at odds on questions of such great importance. This is the opinion of Professor HOLLAND, who has written to the *Times*, expressing the hope that the examination of these questions would form one of the subjects worthy of the attention of this Conference. The Conference should, in our opinion, respond to this appeal by formulating rules that will show the civilized world that we have settled these questions without for a single instant losing sight of respect for rights that must be guaranteed.

(2) A neutral State has, in our opinion, the right to prohibit, wholly or partially, if it deems it necessary, admission of belligerent war-ships, prizes, or certain other vessels or classes of vessels to its ports and territorial waters, either for the entire duration of the war or for a fixed period of time. It may authorize exceptions for humanitarian reasons in the case of belligerent vessels in distress. This includes not only accidents caused by the sea, but also repairs rendered necessary by damage resulting from this condition of distress.

We recognize the right to enact this prohibition, but we do not believe that these neutral States are absolutely obliged to forbid the navigation of war-ships in their ports and waters, free navigation along their coasts being open to all nations.

This prohibition is perhaps the best means of guaranteeing the neutrality of the country enacting it.

It is clear, moreover, that the privilege which a neutral State may allow belligerents of cruising in its waters does not include admission to its ports, nor the navigation of its rivers, streams or canals, for it would in that case evidently be giving aid and committing a real violation of neutrality.

(3) It would be a manifest violation of neutrality if a neutral State permitted belligerent war-ships to use its ports or territorial waters as places of observation, of meeting, or of passage if forbidden by the neutral, as a base for military operations of any kind, or as the seat of a prize court. In this respect the various proposals submitted by the delegation of Great Britain seem to us perfectly acceptable.

(4) We likewise consider her proposal relative to the case of a prize taken in the territorial waters of a neutral State, whether the prize is still within its jurisdiction or whether it has left that jurisdiction.

(5) The length of stay of belligerent war-ships in neutral ports and territorial waters should be limited. The rules on the length of stay do not apply to vessels that were already there for the protection of their nationals, such vessels having an entirely different function from that of war-ships admitted by virtue of the right of asylum. They are charged with a mission of protection and may remain in neutral ports in time of war as in time of peace.¹

[582] Although we have not yet any fixed principle for the limitation of this stay,

¹ Verraeas, *Les lois de la guerre et la neutralité*, vol. ii, p. 84.

and although, except for the observance of the general principles of neutrality, we are not yet bound by diplomatic conventions to respect any particular rules, we nevertheless consider reasonable the rule that is fairly widespread and accepted by various Powers of the limitation of this stay to a fixed period of twenty-four hours, except when, as proposed by Japan, the condition of the sea should prevent the said vessels from sailing, the legal length of stay being extended until the condition of the sea ceases to be dangerous.

The repairs and supplies necessary to enable the vessel to put to sea are indispensable, since without permission to make repairs and to procure all that is necessary to continue its voyage, it would be of no use whatever to grant the vessel such a concession.

(7) When a belligerent war-ship takes refuge in a neutral port or territorial waters, to escape pursuit by its enemy, if it is unable to complete the necessary repairs or to take on sufficient supplies to enable it to put to sea within the period allowed it, that is to say twenty-four hours, it is preferable, as a guaranty, for the neutral State to intern it until the end of the war.

That is the surest way of conforming to the true spirit of neutrality. This would not be too rigorous a proceeding, for the necessity of closing the ports to these vessels would thus be avoided, which closing might entail heavy damages, and moreover the complications which the difficulty of this delicate question might lead to would be avoided.

We can here proceed in the same manner only in the case of vessels in distress as the result of damage caused by the condition of the sea.

In this last case the solution accepted by all is to allow the vessel admitted under these conditions to depart freely; but if this is done and if in a particular case the vessel is given refuge, this would be a first infringement of the principle of the inviolability of neutral ports and waters, which infringement would naturally be regarded as complete, if the belligerent vessel is not subsequently required to depart upon the expiration of the customary period of twenty-four hours in these ports or waters.

Humanitarian considerations should undoubtedly decide neutrals to receive a pursued belligerent vessel, this aid being indispensable to enable it to escape a danger which might seriously jeopardize the situation of those on board or expose the vessel to certain loss unless it takes refuge in the first port it comes to.

But when this duty is once performed and the established rules covering the matter have been set aside to give way only to Christian sentiments, which demand not only that the vessel be admitted, but even that the neutral go to its aid to save it maintenance of his neutrality by the neutral requires that these vessels be held in the neutral's ports and waters and disarmed there, and that they shall not take any further part in hostilities for the duration of the war.

(8-9) We think it advisable to make a distinction according as it is a question of single ships or groups of ships, and for this purpose we might accept the proposal submitted by the delegation of Japan, which does not permit more than three belligerent vessels belonging to the same State or its ally to be moored simultaneously in the same ports or waters of a neutral State.

This would be following the example of the Netherlands, which country in its decree of February 2, 1893,¹ fixed the number of belligerent ships [583] which would be admitted to its ports and waters at three.

It is a time-honored measure, the first instance of which is to be found

¹ Donker Curtius, *Des navires de guerre belligérants* (Bordeaux, 1907), p. 199.

in the treaty of 1604 between England and Spain, the number of vessels to be admitted being 6 and 8. This measure might undoubtedly be useful, especially to Powers whose armament is weak and which might in this way refuse to allow an armed force of such size as might give rise to difficulties to enter its ports.

If vessels of both belligerents should be simultaneously in a neutral port, the custom usually followed by neutral States is to require the lapse of twenty-four hours between the departure of the two enemies. This system was accepted to prevent neutral ports and waters from becoming the theater of acts of hostility between belligerent vessels.

The most important point concerning this question is that of priority, raised by the delegations of Japan and of Russia.

Up to the present time it has been permissible for that one of the enemies who weighs anchor first to lie in wait for his adversary along the boundary line of neutral territorial waters and to enter into combat with him, which only their simultaneous presence in the same port has rendered possible.¹

In order the better to conform to the true spirit of neutrality, some have wanted to permit the weaker vessels to leave first, but such a system does not appear to have been adopted in practice; so that no fixed rule seems yet to have been recognized upon this point. Nevertheless the vessel first making the request may, without any violation of neutrality, be allowed to leave first. This would be more in accord with international rules than to leave it to the neutral State to decide which of the hostile vessels shall leave first, as proposed by the delegation of Japan.

(10) A special rule should be formulated for vessels accompanied by prizes.

The solution of so controversial a question as this most in conformity with the natural interpretation of neutrality would be to refuse these vessels admittance under any circumstances, as proposed by the delegation of Spain, drawing its inspiration perhaps from the learned opinion of PHILLIMORE, who demands that admission of this class of vessels to neutral waters and ports and their stay therein be prohibited except as the result of *force majeure*.

In practice, other jurists affirm, the tendency of neutral States is to forbid capturing vessels, as a general rule, to come into port accompanied by their prizes, except in case of peril at sea.

In harmony with many writers, we hold that prizes may be admitted to neutral ports only in case it is morally impossible to take them to a belligerent port. Moreover, to prevent the serious difficulties, which the presence of capturing vessels may cause to the neutral who admits them to his ports, we consider FIORE's opinion acceptable, who, in order to safeguard all rights, contends that a seized vessel should be detained, to be subsequently restored to its owner if the competent court declares the prize illegal, or to be kept at the disposal of the captor Government if, on the other hand, the competent court declares it valid.

In case the captor brings his prize into a neutral port to escape the pursuit of the enemy, we hold, as the English delegation has proposed, that the prize, together with its officers and crew, should be released by the neutral Power, and that the prize crew should be interned in the same port.

[584] (11) Outside of the cases already formulated by us, we are in agreement upon the point that a neutral State should not permit a belligerent war-ship to repair within its jurisdiction damage resulting from a fight, or in

¹ Pillet, *Les lois actuelles de la guerre*, p. 308.

any event to make repairs in excess of what would be necessary to enable it to navigate and within the period allowed it to make these repairs.

(12-13) The question of supplying provisions, and in particular coal, is still a controversial one from the point of view of practice. No general agreement has yet been reached as to the solution that should be given this question now. Events which have taken place in recent wars have led to an entirely new way of looking at this question, even to allowing the radical opinion of those who would refuse belligerents the right to take on coal in neutral waters and ports to show itself, the supplying of food being already permitted in a measure upon which the delegates are more or less in agreement.

In the War of Secession the necessity of regulating the matter became apparent for the first time. The English instructions issued, it is said, at the instance of the United States, date from that time. These instructions laid down the principles here defended by the delegations of Spain, of Japan, and of Great Britain, and in part by the delegation of Russia.

As for declarations of neutrality, we have already declared ourselves to be in favor of the rules laid down after the publication of these instructions; that is to say, we have declared ourselves in favor of the rule prescribing that a belligerent ship may be authorized to take only sufficient coal to enable it to reach the nearest port of its country, or the nearest neutral destination.

As for the quantity to be furnished the ship, we have always considered it necessary to fix a reasonable limit, given the preponderant part which coal plays in modern naval wars.

We also recognize as reasonable the period of three months, reckoned from the date on which the vessel completes its first loading, during which a belligerent vessel that receives supplies in a neutral port may not again take on supplies in any port or in any waters of that country.

In view of the uncertainty that prevails as to the rules to be applied to these serious and delicate questions regarding the quantity of coal and time within which supplies may not be replenished, which rules are still likely to give rise to rather serious objections, we consider it preferable to keep to a middle ground, as far removed from those who would have the furnishing of coal almost entirely prohibited, confusing it with war supplies, as from those who hold that every Government is free to furnish coal to a belligerent in any quantity whatever.

(14) As for restrictions in the matter of vessels which come within the theater of war operations or which are in proximity to the zone of hostilities, we favor the English proposal that neutrals be permitted to search all vessels within their jurisdiction.

(15) The measures governing the departure of belligerent war-ships which do not conform to the rules concerning the length and conditions of their stay in neutral ports and waters are those which are generally proposed and accepted by almost everybody.

(16) It is a difficult matter to know what is the situation of a State that [585] is a victim of a violation of neutrality, and especially to say what that

State's duty is to insure observance of the rules adopted, particularly if it has not at its disposal the means necessary to guarantee that neutrality. It is generally said that the State is bound to do all in its power to prevent a belligerent from committing hostile acts in its territorial waters.

Very serious violations of the duties of neutrality may be regarded as a "*casus belli*." It would be easy to avoid them, thanks to the means which this

Conference is seeking to discover to insure to all peoples the tranquillity to which they have a right in the international community.

Violations that are of less importance are settled without difficulty between the neutral State and the belligerent, the courts deciding the amount of damages to be paid for these violations.

Such are the considerations which we desire to present with regard to the *questionnaire* that is to serve as a basis for our further deliberations.

We hope to hear in the regular course of the discussion explanations that will contribute to a better understanding of all the questions raised. We shall then examine them with care to judge of the great importance of the results accomplished.]

The **President**, having inquired whether anyone desires to speak, declares the general discussion closed. The statements made by the various delegates show that there is entire agreement as to there being a general principle governing the question of the treatment of belligerent war-ships in neutral ports and waters. Before proceeding to a discussion of the articles of the British proposal, he asks his Excellency Sir **ERNEST SATOW** whether he consents to referring the first article of said project to the Second Commission, which is examining the question of the opening of hostilities.

His Excellency Sir **Ernest Satow** consents.

The **President** then proposes that the examination of Articles 3, 5, 7, and 31 of the British project¹ be postponed until the end of the discussion.

His Excellency Mr. **van den Heuvel** joins in the **PRESIDENT'S** proposal, which, however, should, in his opinion, be made broader. The British project contains both provisions of a general nature and rules covering specific cases. There are two classes of questions which should be distinctly separated: questions of principle relating to the rights and duties of neutrals and the question of application, relating to the treatment of belligerent vessels in neutral ports and waters. The order proposed by his Excellency Count **TORNIELLI** has for its object the separation of two classes of ideas, but in order to reach this result the more completely, his Excellency Mr. **VAN DEN HEUVEL** considers it advisable to defer Articles 1-10 of the English proposal until the end of the discussion. All these articles refer to the rights and duties of neutrals in general, and it is not until Article 11 that the proposal refers specifically to the question of the treatment of belligerent ships in neutral waters.

Mr. **Louis Renault** (reporter) expresses the opinion that this procedure would have the drawback of depriving the subcommission of the benefit of the *questionnaire* which has been prepared with the view of following a definite order of work.

His Excellency Mr. **van den Heuvel** states that he does not insist upon the procedure which he has indicated and which, in his opinion, would facilitate the discussion. The **PRESIDENT** having proposed to postpone consideration of some of the articles, he had confined himself to suggesting that a certain number of the remaining articles might be added to those which it has been deemed advisable to postpone.

[586] The **President** thinks that the discussion should follow the order of the *questionnaire*. He requests Mr. **VAN DEN HEUVEL** to be good enough to indicate the place in the discussion which, in his opinion, should be assigned

¹ Annex 44.

to the different articles. The committee of examination will take these observations into account.

Rear Admiral **Sperry** reserves the right to discuss later on the different proposals submitted to the subcommission. He confines himself to remarking that all the acts performed by a neutral State in fulfilment of its duties of neutrality are performed by its own authority and not for the purpose of fulfilling a duty or granting a favor to one or the other of the belligerents. While it is recognized that the treatment of belligerent vessels in neutral waters is a matter that should be settled, he states the imperative necessity of not loading neutrals, whether powerful or weak, with an intolerable burden for the purpose of limiting and defining their responsibility for their protection.

The **President** remarks that the declaration of the delegation of the United States is of a general nature. It will be inserted in the minutes. He then recalls that his Excellency Mr. **TCHARYKOW** has reserved the right to present a declaration in the course of the discussion. He therefore requests the delegate of Russia kindly to inform him when this declaration will take place. The **PRESIDENT** adds that the delegations of Denmark and of Norway have suggested that a distinction be established between the regulations applying to ports and those applying to territorial waters. He likewise requests them to be good enough to submit their proposals in due time.

Point 1 of the *questionnaire* not having called forth any comments, the **PRESIDENT** reads question 2 and Article 30 of the British project.

His Excellency Sir **Ernest Satow** requests that this article be corrected by substituting the words, "*of the belligerent Powers*" for the words, "*of a belligerent Power*."

His Excellency Mr. **Hammar skjöld** observes that the reply to the second question by the British proposal refers not only to ports, but also to territorial waters. He therefore ventures to call the subcommission's attention to the special situation of States located within the radius of territorial waters. The Institute of International Law adopted, at its 1894 session, the following provision: "Straits which serve as a passage from one open sea to another open sea can never be closed." If the right of neutrals to prohibit war-ships and prizes to enter these territorial waters is sanctioned, as set forth in the British proposal, Article 30, it would be necessary to add to this provision an exception to the same effect as the resolution of the Institute.

At the request of the **President**, who desires to know whether the delegation of Sweden has already formulated an amendment in this sense, his Excellency Mr. **Hammar skjöld** replies that his amendment consists in adding to Article 30 the words, "*Straits which serve as a passage from one open sea to another open sea can never be closed*."

The **President** observes to his Excellency Mr. **HAMMARSKJÖLD** that Article 32 of the British proposal provides specifically for the case in question. He therefore asks whether this provision seems to be sufficient or whether he maintains his special amendment.

His Excellency Mr. **Hammar skjöld** replies that he may reserve his amendment until the discussion of Article 32 of the British proposal; but that he [587] desired to mention it when No. 2 of the *questionnaire*¹ was under discussion.

¹ Annex 49.

The **President**, having ascertained that no one wants the floor with regard to question 2, states that the reply thereto in Article 30 of the English project appears to him to have been approved by the subcommission, with the modification proposed by his Excellency Sir ERNEST SATOW.

The meeting adjourns at 12:30 o'clock.

FOURTH MEETING

JULY 30, 1907

His Excellency Count Tornielli presiding.

The meeting opens at 10:30 o'clock.

The **President**, on opening the meeting, says that in presiding over the debates he will probably have occasion to quote from the treaty of May 8, 1871, between the United States of North America and Great Britain, and from the part of the Italian Merchant Marine Code relating to the neutrality of the State toward belligerent Powers. He has therefore requested the secretariat to place these texts before the subcommission.¹

The **PRESIDENT** adds that the amendments of the delegates of Denmark² and of Portugal³ have likewise been distributed. He requests his Excellency the delegate of Denmark kindly to take into consideration the fact that Article 1 of the British project was the subject of discussion by the subcommission at the meeting of July 27. The subcommission agreed that this article belonged to the question of notification of the opening of hostilities to neutrals. The Second Commission, to which this question was referred, has not yet finished examining it. Therefore the amendment to-day proposed by Denmark together with Article 1 of the British project,⁴ should be referred to the Second Commission.

As for the Portuguese amendment to Article 30 of the British proposal, the **PRESIDENT** observes that the subcommission, which accepted this article of the British proposal on July 27, has, at the request of his Excellency Sir ERNEST SATOW, made the modification therein asked for by the Portuguese delegation.

His Excellency Mr. **Hagerup**, referring to the observations formulated by him at the preceding meeting, requests the **PRESIDENT** to be good enough to place on the order of business a question which might be added to the sixteen questions of which the *questionnaire*⁵ consists. This question might be formulated as follows: "*Is it necessary to apply the same rule to territorial waters as to neutral ports?*"⁶

As the logical consequence of this proposal, he asks that the words, "*and territorial waters*," be omitted from the third point of the *questionnaire*.
[589] The **President** officially acknowledges his Excellency Mr. **HAGERUP**'s submission of a seventeenth question to be added to the *questionnaire*, the consideration of which is to be continued to-day. This question will be printed and distributed. The discussion thereof will give the very distinguished delegate

¹ See annexes A and B.

² Annex 45.

³ Annex 50.

⁴ Annex 44.

⁵ Annex 49.

⁶ Annex 51.

of Norway an opportunity to present his views on the important question which he has brought up.

His Excellency Mr. Tcharykow speaks as follows:

MR. PRESIDENT: In conformity with the desire which you expressed at the close of the preceding meeting, the delegation of Russia has the honor to present the following text, which it considers advisable to have the committee of examination include in the Convention to be drawn up concerning the treatment of belligerent vessels in neutral ports and waters:

The exercise by a neutral State of the rights laid down in this Convention, within the limits therein indicated, can under no circumstances be considered by one or other belligerent as an unfriendly act.

The delegation of Russia is also of the opinion that it will be incumbent upon the committee of examination to take into consideration, when it deals with the matter of fixing the said limits, the practical and judicious observations of his Excellency the first delegate of Norway at our last meeting. These observations, which his Excellency Mr. Hagerup has just reiterated, refer, as we know, to the very great difference there is to a neutral State between its *ports* and its *waters*.

The delegation of Russia concurs entirely as regards this subject in the declaration of the United States of America, stating "the imperative necessity of not loading neutrals, whether powerful or weak, with an intolerable burden." It would be contrary to this requirement if we should attempt to ignore the objections cited above to the complete assimilation of the duties of a neutral State as regards its *ports* to its duties as regards the *waters* that wash its islands and coasts.

The committee doubtless will not fail to examine with care to what extent such and such an obligation imposed of right upon a neutral State with regard to the former will apply to the latter.

I should like to add a few words concerning the correction requested by the British delegation in the text of its proposal mentioned under No. II (Article 30 of the British project) ¹ of the *questionnaire*.² The substitution of the words "*of the belligerent Powers*," for the words "*of a belligerent Power*," has naturally for its object the insuring of absolute impartiality on the part of the neutral State toward all the States at war. The delegation of Russia thinks that under this condition of absolute impartiality the right of the neutral State to close its ports and waters to belligerents necessarily carries with it the right to open these ports and waters to them. We think that it would perhaps be advisable, in this connection, to enact in a general way in the Convention before us, by analogy to what has already been done in the projected regulations concerning the rights and duties of neutrals on land (Article 4a), that "every prohibition or restriction, as well as every advantage or facility, shall be applied indifferently to both belligerents," and that it would be desirable if the committee of examination of this Commission would keep these considerations in view when it takes up the drafting of the texts in question.

Mr. Louis Renault (reporter) proposes that the various objections resulting from the difference between neutral ports and neutral territorial waters be dealt with together, and that they be not discussed in connection with each article.

¹ Annex 44.

² Annex 49.

[590] His Excellency Sir **Ernest Satow** says that the British delegation accepts the amendment¹ submitted by the delegation of Portugal to Article 30, on condition that the following paragraph be added to that article:

A neutral State may also forbid any belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or territorial waters.

The **President**: "Under No. III of the *questionnaire*² we find several proposals grouped together which ought to be separated into two groups: those that seem to be acceptable to all the delegations, and those that should be reserved for a more detailed and exhaustive examination. I therefore place at the head of to-day's discussion Article 2 of the proposal of Great Britain. That article contains the affirmation of a general principle, which seems to dominate the draft regulations that we are engaged in drawing up. It is, as his Excellency Sir **ERNEST SATOW** said in his remarkable and lucid address of last Saturday, the dominant idea of this part of the draft."

His Excellency Mr. **van den Heuvel** says that Article 2 of the British project is of an absolutely general nature. It applies both to war on land and to war on sea. In his opinion, it is for the drafting committee to decide upon the place which this article should occupy.

Mr. **Louis Renault** replies that this is merely a question of order, but it must be noted that the reference requested presupposes that the Conference will draw up regulations in the matter of neutrality applicable to both war on land and war on sea. Nevertheless it may happen that two distinct sets of regulations will be drawn up. The drafting committee should be given great latitude with regard to the question raised by his Excellency Mr. **VAN DEN HEUVEL**.

The **President** replies to his Excellency Mr. **VAN DEN HEUVEL** that the drafting committee will take into account the observations presented by him.

His Excellency Mr. **Martens** desires to submit to the subcommission certain observations of a general nature. The **PRESIDENT** has observed that the difficulty of the question of the treatment of belligerent war-ships arises from the fact that there are no generally recognized principles on the subject.

There is not only a divergence of principles, but also a conflict of interests: on the one hand, the belligerent who wishes to weaken the enemy at any cost; on the other hand, the duties of neutrals.

We must therefore fix a boundary line between the rights and claims of belligerents and the obligations of neutrals resulting from the state of war.

In his opinion, precedence must be given to the rights of neutrals.

The neutral has only one duty: not to intervene in the war, and to see that his sovereignty and independence, as founded upon treaties, are respected.

These essential rights of the neutral State are in no way affected by war.

A belligerent vessel that seeks refuge in a neutral port must obey the local laws. In his opinion, the various projects have not taken this principle sufficiently into account, while they have insisted upon the duties of neutrals.

The starting-point should be the sovereignty of the neutral State over its territorial waters and ports. It follows that the belligerent has no right to consider himself the master when he seeks refuge with a neutral. This is the ground upon which the question before us should be placed.

¹ Annex 50.

² Annex 49.

[591] The **President** thanks his Excellency Mr. MARTENS for having set forth with such lucidity and authority the principles that he himself laid down at the beginning of this part of the work of the subcommission. He congratulates himself, for it is his purpose, as he has said, to be guided by those principles in presiding over the discussions.

The observations that have been exchanged by the delegates contain no objection to considering Article 2 of the British project as embodying the dominant principle of the regulations now being studied.

The **PRESIDENT** then makes the following address:

A great number of provisions in the British project, which we shall examine in detail, relate to this general principle.

But I must revert to a preliminary question in the matter of wording rather than of substance. At our last meeting the very distinguished British delegate gave the reasons why the regulations which we are drawing up should not, in his opinion, deal with the duties of belligerents alone, but also with the duties of neutrals. This remark, however, seems to apply rather to the provisions of the British project concerning the rights and duties of neutral States in naval warfare than to those governing the treatment of belligerent war-ships in neutral ports and waters.

Since by adopting Article 2 of the British project we have begun with the duty of belligerents, it would be proper to continue along that line.

The general harmony of the draft regulations would be better respected if, while continuing the consideration of the duties of belligerents, we could introduce such modifications in form as are necessary to adapt the wording used in the British project to the matter in question.

This would be a matter of drafting, which we could not perhaps execute here with all the attention desirable, but to which we may ask the delegate of Great Britain to give his assent in principle. Our task would thereby be greatly facilitated.

His Excellency Sir **Ernest Satow** having given his assent, the **President** continues as follows:

Before taking up the special provisions of Articles 6, 8, 9, 10, 25, and 32 of the British project,¹ which are grouped under No. III of the *questionnaire*² I think we should examine Article 2 of the Russian proposal.³

There is in this article an application of the general principle, which we have borrowed from the British project and accepted, to the special case of acts of hostility

Article 1 of the Spanish proposal⁴ refers to the same thing.

Before the discussion takes place, I should like to have the question well put, and I therefore ask that I may be allowed to make a remark.

The proposition of Article 2 of the delegation of Russia manifestly includes under the generic head of "*Acts of hostility*" both the fighting and capturing of enemy ships, or even of neutral ships carrying contraband.

In Article 28 of the British project, which is included under No. IV of the *questionnaire*, it is a question of prizes captured in territorial waters in violation of neutrality. I ask the subcommission whether it would not be better

¹ Annex 44.

² Annex 49.

³ Annex 48.

⁴ Annex 47.

to state in a single provision that all captures and acts of hostility whatsoever are forbidden in the waters of a neutral State.

[592] In Article 251 of the Italian Merchant Marine Code of 1877¹ appears the following provision:

A capture or any hostile operation between ships of belligerent nations in the territorial waters or in waters adjacent to islands belonging to the State will constitute a violation of territory.

This text, in my opinion, well puts the question we are considering.

His Excellency Mr. Tcharykow states that the delegation of Russia has no objection to the three texts which the PRESIDENT has read being examined in the way he has proposed.

His Excellency Lieutenant General Jonkheer den Beer Poortugael recommends that vague terms such as, "war operations, base of operations, etc.," which might lead to confusion, be not used in the discussion or in the text.

Mr. de Beaufort asks permission to present a few observations on the subject and speaks as follows:

As I had the honor to point out at the last meeting of this subcommission, the conventional rules to be enacted in the matter of the treatment of belligerent war-ships in neutral ports must first of all be very definite, in order that they may not give rise to unpleasant misunderstandings.

In this connection, I venture to call your attention to Article 1 of the Spanish proposal and to Article 1 of the Japanese proposal, which mention "bases of military operations, whatever be the nature of such operations" and "bases of military operations or acts of any kind with military purposes." I believe that every belligerent war-ship without exception falls under the application of these articles, for I cannot imagine such a vessel not engaging in war operations in the broad sense in which the Spanish article uses this expression and which the corresponding articles of the Russian and British proposals do not seem to exclude. I also find it difficult to conceive of a belligerent war-ship navigating without a military purpose. (Article 1 of the Japanese proposal.)

Even if the vessel is only keeping a watch on neutral commerce, it is as a matter of fact pursuing a military object. These proposals, however, permit belligerent vessels to take on food and coal (Spanish proposal, Article 5, and Japanese proposal, Article 4), but Article 5 of the Japanese proposal contains a further restriction which might be regarded as an absolute prohibition, for it includes not only belligerent ships entering the theater of war or headed in that direction or toward the zone of actual hostilities, but also those whose destination is doubtful or unknown. This last category would seem to include all belligerent vessels. The commanding officers of all these ships will have orders which they may not communicate to the authorities in neutral ports. They may therefore be considered almost always as having a doubtful or unknown destination.

There is here an ambiguity, if not a contradiction, due to the vague meaning of the expressions, "war operations," etc., and I venture again to call this subcommission's attention to the desirability of making these expressions more definite, if they are indispensable.

The Convention on which the Conference agrees should, I repeat, first of all be definite, in order that it may not give rise to misunderstandings.

If the uncertainty which now exists in the absence of conventional rules continues after these rules have been established, because they are not definite, neutrals will be exposed to difficulties which may lead to serious

¹ See annex B.

disputes. The British delegation has formulated in Article 10*a* and *b* certain positive rules defining the expression *base of operations*. This is a system that I approve, but I believe that we should add certain negative rules; that we should specify certain cases in which neutral waters should not be considered as serving as a base of operations, for example:

I. Neutral ports and territorial waters cannot be considered as serving as a base of military operations if the war-ships of belligerent States load therein the fuel needed to take them to the nearest non-enemy foreign port.

II. Likewise the war-ships of a belligerent State, which were in foreign waters at the beginning of the war, may always receive in a neutral port or territorial waters sufficient fuel to enable them to reach a port of their own country without the neutral port's being considered as serving as a base of war operations.

The President thanks his Excellency Mr. TCHARYKOW for his adhesion to the form in which he has put the question of the prohibition of acts of hostility. Since no objections have been raised in the matter of principle, the different formulas will be referred to the committee of examination.

The PRESIDENT continues as follows:

The following articles, prohibiting other war operations in neutral waters, are grouped together:

Article 1 of the Spanish proposal;¹

Article 10 of the British project;²

Article 1 of the Japanese proposal;³

Article 3 of the Russian proposal.⁴

With differences of wording, which are of no great importance, these four proposals seem to be inspired by the second point of Article 6 of the Treaty of Washington, which has been in force since 1871 between the United States of North America and Great Britain. The two Powers agreed to communicate the contents of this article to the maritime Powers and to invite them to adhere thereto. I may therefore venture to count upon their support in suggesting the adoption of the text of the second point of Article 6 of the Treaty of Washington, with a slight variation in its form which is necessary in order to adapt it to the project which we are elaborating.

The Treaty of Washington⁵ states:

A neutral Government is bound:

First, . . .

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

In our regulations this text should be adopted in the following form:

Belligerents are forbidden to use the ports or waters of a neutral State as a base of naval operations against the enemy.

Can this formula, which has the advantage of appearing in an international

¹ Annex 47.

² Annex 44.

³ Annex 46.

⁴ Annex 48.

⁵ See annex A to these minutes.

convention in force between two great maritime Powers, likewise satisfy the authors of all the proposals under consideration? It seems to me that it can, so far as Spain and Russia are concerned, but perhaps not in the case of England and Japan.

[594] His Excellency Sir **Ernest Satow** emphasizes the fact that it seems to him necessary to make a distinction in the matter of the supplies that may be taken on in a neutral port. It is permissible to buy provisions to feed the crew for the time being, while the loading of supplies by auxiliary vessels constitutes a real military operation.

The **President** resumes the floor and says:

Article 10 of the British proposal¹ specifies two cases of operations which should be included under the head of military operations. They are indicated by the letters A and B.

I ask your permission to take up case B first. It refers to prohibiting loading by auxiliary vessels in neutral waters. Is not this prohibition included in the prohibitions contained in Article 6 of the British proposal?

In any event, may I venture to remind you of the second part of the second point of Article 6 of the Treaty of Washington?

It contains a prohibition forbidding belligerents to make use of territorial waters for the purpose of replenishing or increasing their military supplies or armaments or for recruiting.

If this provision were accepted, those of Article 6 and of Article 10, paragraph B of the British project might be regarded as superfluous.

His Excellency Mr. **Tcharykow** says that the delegation of Russia has the honor to state that paragraph 2 of Article 6 of the Treaty of Washington responds entirely to what it has in mind and that it is ready to accept the sense thereof, requesting the committee, however, to take into consideration also Articles 2 and 7 of the Russian proposal when the time comes to draw up the definitive text.

His Excellency Sir **Ernest Satow** maintains that the text of paragraph B of Article 10 of the British project seems to him more definite. He therefore ventures to recommend its adoption to the committee of examination.

The **President** continues: It remains for us to examine proposal A of Article 10 of the British project.

It relates to the installation on neutral territory or on board a vessel in neutral waters of a radio-telegraph station or any other apparatus for communication with belligerent war-ships.

Is the inclusion of this special operation among those that serve a belligerent as bases of operation accepted?

No objection being made, the **PRESIDENT** states that this provision of Article 10 of the English project¹ is accepted. He asks himself where this clause should be placed.

It might be coordinated with the article that reproduces the second point of Article 6 of the Treaty of Washington.

It is decided that the committee of examination will consider this question.

The **President** submits two other proposals of the British delegation to discussion and observes that one of them certainly bears a relationship to the questions that are now before the subcommission. He means the proposal contained in Article 25 of the project of Great Britain. He reads the proposal.

¹ Annex 44.

No one having made any comments, the **PRESIDENT** considers this article adopted.

[595] Continuing, the **PRESIDENT** says: The other proposal appears in Article 8.

I think that we have here one of those articles to which his Excellency Mr. VAN DEN HEUVEL referred in the general discussion and which, in his opinion, would be better placed in a special chapter entitled: "The Rights and Duties of Neutral States in Naval War."

It has already been practically agreed that in this chapter should appear some of the proposals of the British delegation which it has been impossible to attach to the *questionnaire*, which comprises only the treatment of belligerent war-ships in neutral ports and waters.

I therefore ask the delegate of Great Britain whether he consents to postponing consideration of Article 8 until we are ready to take up Articles 3, 5, 7, and 31 of the English project.

His Excellency Sir **Ernest Satow** having given his assent, the **President** says:

A final provision of the English project¹ under No. III of the *questionnaire*² appears in Article 32 of the English project.

His Excellency **Turkhan Pasha** makes the following declaration:

The Imperial Ottoman delegation deems it its duty to declare that, given the exceptional situation of the Dardanelles and the Bosphorus, resulting from treaties in force, these straits, which are an integral part of Turkish territory, cannot, in any event, be referred to by Article 32 of the British proposal. The Imperial Government cannot, under any circumstances, conclude an agreement tending to limit its indisputable rights with regard to these straits.

The **President** officially acknowledges his Excellency **TURKHAN PASHA's** declaration and requests him to file the text thereof in order that it may be inserted in the proceedings of the Conference. He states that the latter is not authorized to modify or alter in its deliberations the conventional system applying to certain straits and channels as the result of treaties in force.

The **PRESIDENT** then recalls that the subcommission must here take up again the examination of the observations submitted at the meeting of July 27 by the delegations of Denmark and Sweden. When these observations were formulated, he ought to have asked the representatives of those two countries whether Article 32 of the British proposal would not give them full satisfaction. The Danish delegation has since formulated an amendment,³ which is read.

Replace the words, "*so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent,*" in Article 32 by the words, "*so as to prohibit in time of war the mere passage through neutral waters joining two open seas by a war-ship or auxiliary ship of a belligerent.*"

Before taking up the consideration of this amendment, the **PRESIDENT** invites the delegates of Denmark and of Sweden to make known their ideas on the subject.

His Excellency Mr. **Hammar skjöld** calls attention to what he said at the meeting of July 27 on the status of certain straits.

Mr. **Vedel** reads the following declaration:

The amendment which the Danish delegation has taken the liberty of pro-

¹ Annex 44.

² Annex 49.

³ Annex 45.

posing to Article 32 of the British project limits the simple right of passage of war-ships and auxiliary vessels of a belligerent to the territorial waters uniting two open seas.

[596] The Danish delegation, in presenting this amendment, was inspired mainly by the following reasons:

Recognition of an unlimited simple right of passage for belligerent war-ships can hardly be reconciled with the neutral's right to close interior waters for the purpose of defending his neutrality—notably bodies of water with two entrances—which offer a belligerent fleet special opportunities as a base of operations, as well as for certain acts that are unlawful in neutral waters.

In granting belligerents the simple right of passage through territorial waters, and at the same time allowing neutrals to prevent admission to these waters, we would be taking away with one hand what we had given with the other.

As the laying of submarine mines by neutrals comes within the jurisdiction of another Commission, I cannot enter into the details of that question.

I only want to bring out the connection between the two questions and the desirability of not restricting by convention the exercise of a neutral's sovereign rights over his territorial waters in such a way as to deprive him of the most effectual means he has of enforcing the important prescriptions of this same convention.

His Excellency Sir **Ernest Satow** feels that he ought to state that in his opinion Article 32 of the British proposal explicitly guarantees to belligerent vessels the right to cross territorial waters in time of war as in time of peace. By inserting a special clause on the subject of straits, would we not be limiting this right of belligerents which we desire to preserve?

Mr. **Louis Renault** explains that, if he has correctly understood Sir **E. SATOW**, the latter is of the opinion that the general principle is that belligerents always have the right to pass through territorial waters. It is evident that they may not insist upon entering a port, but they are always free to cross territorial waters, no matter whether it is a question of a strait joining two open seas or not. The rule therefore is the right of passage, but of course no acts of hostility may be committed. The Danish proposal might therefore seem indirectly to place a restriction upon the principles contained in the British proposal.

The **President**, in accord with the **Reporter** and his Excellency Sir **Ernest Satow**, thinks that the examination of the Danish amendment might be entrusted to the committee of examination.

His Excellency Mr. **Hammar skjöld** does not doubt that the purpose of the British proposal is merely to lay down the principle that the passage of war-ships through territorial waters is lawful. He likewise presumes that neutral States will always have the right to impose certain restrictions; otherwise it would be difficult for them to take the necessary measures to safeguard themselves, as well as to maintain their neutrality. In time of peace certain routes are closed; such exceptions are *a fortiori* necessary in time of war.

His Excellency Mr. **HAMMARSKJÖLD** has no objections to referring the Danish amendment to the committee of examination.

The **President** feels that he is interpreting the ideas that have manifested themselves in the exchange of views that has taken place in stating that Article 32 should be transferred to the chapter concerning the rights and duties of neutral States.

He then continues his exposition, saying that before closing No. III of the

questionnaire, he must take up a particular point in the proposal of Japan. [597] In its first article this proposal speaks of belligerent vessels that make use of neutral ports and waters as places of observation or of meeting.

He asks the Japanese delegation whether it thinks that the prohibition in question could still be necessary in case the subcommission should succeed in coming to an agreement on the length of stay of belligerent vessels in neutral waters.

In any event, it would be proper, he says, to combine the debate on this part of the Japanese proposal with the debate soon to take place on fixing the length of stay. It is therefore a short postponement of the discussion of Article 1 of the proposal of Japan which he asks the eminent delegate of that country to be courteous enough to grant.

His Excellency Mr. Keiroku Tsudzuki gives his assent.

Before passing to the reading of question IV, Commander Burlamaqui de Moura reads the following declaration in the name of the delegation of Brazil:

Considering that it is not permissible after the declaration of war for belligerents to continue to obtain fighting ships in neutral countries, it must nevertheless be noted that the reasons for stopping this practice cannot apply to vessels under construction before the opening of hostilities at a time when hostilities could not be foreseen.

Considering, further, that under these conditions, it would not be equitable to deprive belligerents of these fighting units, the acquisition of which was consummated before war became imminent, these vessels should be regarded as an integral and recognized part of the navy of the country in question.

The delegation of Brazil therefore submits the following amendment:¹

War-ships in course of construction in the shipyards of a neutral country may be delivered with all their armament to the officers and crews appointed to receive them, when they have been ordered more than six months before the declaration of war.

The President officially acknowledges the filing of this proposal and expresses the opinion that it should be placed under the head of the rights and duties of belligerents:

Question IV of the *questionnaire*² is taken up.

The President reads it and states that there is only one proposal in response to this question. It is contained in Article 28 of the British project.³

He notes that it is a question of a provision which follows from the provisions upon which an agreement has been reached. He states that, no objection having been made to the adoption of this article, it may be considered as adopted.

Question V of the *questionnaire* is submitted for discussion.

The President reads it and then makes the following remarks:

"We have two substantially different replies to this question. Spain, [598] Great Britain, and Japan propose that the so-called 24-hour rule be made binding upon all the Powers. The same rule is contained in the Italian Merchant Marine Code. The Russian delegation, on the contrary, thinks that it is the right of the neutral State to determine the length of stay of belligerent war-ships in the waters and ports of the said State.

¹ Annex 52.

² Annex 49.

³ Annex 44.

The question must be better stated. We are all agreed that every State has the right to make its own laws. There would be no innovation if we inserted in the regulations we are preparing this fundamental principle, in connection with the special case of the length of stay. We must, however, try to reach an agreement on the greatest number of points possible, so as to create a basis of uniform legislation. One of these points is that of the length of stay accepted by many of the States as a universal rule. This period is almost everywhere twenty-four hours. I do not know of the existence of any intermediate proposal. It would therefore be necessary to vote by Yeas and Nays on the adoption of a fixed period, and then upon the length of the period.

His Excellency **Turkhan Pasha** submits to the Commission the hypothesis of a belligerent vessel's entering the territorial waters of a neutral State where there is no supervision of any kind. He inquires how the neutral State could be responsible if it had no knowledge of the vessel's stay in its waters.

His Excellency Sir **Ernest Satow** remarks that the word, "knowingly," appearing in the British proposal would seem to meet the situation which his Excellency **TURKHAN PASHA** has in mind.

His Excellency Mr. **Tcharykow** makes the following declaration:

The delegation of Russia thinks that it is important to observe in connection with this question the general principle that his Excellency Mr. **MARTENS** has expounded with such clearness this very morning. Therefore the delegation of Russia maintains in its entirety the text of paragraph 4 of its proposal.

Mr. **Louis Renault** states that he does not intend to submit at the present time a compromise proposal between the two conflicting systems: the period of twenty-four hours imposed by a convention upon the contracting parties and the principle of the absolute liberty of the neutral State propounded anew by his Excellency Mr. **TCHARYKOW**.

But he hopes that the committee of examination will find an intermediate system.

His Excellency Mr. **Tcharykow** says that the delegation of Russia, inspired by sentiments of conciliation, of which it has given frequent proof in this assembly, has no objection to paragraph 4 of its proposal being studied by the committee of examination, with the hope of finding a ground on which a unanimous agreement of all the States represented here might be brought about, the great majority of which States will always have occasion to regard these questions from the point of view of the rights of neutrals.

His Excellency Mr. **Hagerup** states that it appears to him necessary to reserve the question of the length of stay, as it seems to be impossible to assimilate neutral territorial waters to ports. He therefore supports the proposal made by Mr. **LOUIS RENAULT** to reserve the question for the committee of examination. He thinks that it is thoroughly understood that the Russian proposal allows every State the right to fix the period of stay by a general declaration at the beginning of the war.

His Excellency Mr. **Tcharykow** admits that this interpretation is correct.

The President states that it follows from the observations made by the delegations of France and of Russia that they agree in asking for a suspension of the vote. He will postpone it until later on to allow time for the intermediate proposals which have been announced for submission in the committee of examination.

[599] In the meantime, although we do not yet know what deliberations will

take place upon the main question, we may take into consideration the exceptions which the 24-hour rule admits of.

Articles 3 and 4 of the Spanish proposal, paragraph *a* of Article 2 of the Japanese proposal, and Article 5 of the Russian proposal contain exceptions.

All these exceptions refer to the case of a forced putting into port as the result of three different causes: stress of weather, damage, lack of supplies necessary for safe navigation. All the proposals before us admit, with certain variations, that in these three cases the length of stay may be extended. It will therefore be necessary for the committee of examination to seek a wording acceptable to all.

Question VII of the *questionnaire* is submitted for discussion. A single article of the British proposal relates to this question. The President reads it and observes that the delegation of Portugal has filed an amendment to this article.

His Excellency Sir Ernest Satow states that the British delegation desires to reserve Article 15 of its proposal.¹

The President observes that, since Article 15 of the British proposal is not submitted for discussion, the amendment thereto must follow the same course. The Portuguese delegation making no objection, it is so decided.

The subcommission passes to question VIII of the *questionnaire*.²

The President reads it and then continues his exposition:

The case of vessels of both belligerents being simultaneously in a neutral port is covered by the proposals of Great Britain (Article 13),¹ of Japan (Article 2, letter *b*), and of Russia (Article 6).

These three States admit the rule of an interval of twenty-four hours between the departures of these vessels.

The expressions used by them are, however, slightly different.

In the proposal of Japan it is stated that the interval must be neither more nor less than twenty-four hours. This peremptory formula does not appear in either the British proposal or Russian proposal. The laws of some countries, for instance those of Italy (Article 250 of the Merchant Marine Code), even give the local authorities the right to increase this interval according to circumstances.

The President expresses the opinion that, in spite of these differences, which, however, are not fundamental, the committee may be given the task of finding a wording acceptable to all.

Nevertheless in all the provisions that are now before us there is a point upon which there is a difference of opinion. Who has the right to determine the order of departure?

The British proposal does not say.

The Japanese proposal gives this right to the neutral State.

The Russian proposal provides that the departures shall follow the order of requests.

The Japanese proposal lays before the subcommission a case not foreseen by the other projects, namely, the case of several vessels belonging to the same State or its allies, which desire to anchor at the same time in the same neutral port or waters. The Japanese proposal forbids more than three such vessels to anchor in the same neutral port or waters.

¹ Annex 44.

² Annex 49.

[600] Mr. Louis Renault observes that, in his opinion, this exception can apply only to neutral ports and not to territorial waters.

The President says that the laws of certain countries contain provisions limiting the number of foreign war-ships that are permitted to anchor in the same port, roadstead, etc., which provisions are applicable also in time of peace.

It will also be necessary for the committee of examination to take into account the objections concerning territorial waters; but the principle of the Japanese proposal seems to be generally recognized.

The President takes up the important question formulated in question X of the *questionnaire*.¹

A belligerent ship with a prize may be admitted to neutral waters only on humanitarian grounds. The laws of Italy, for example, forbid a war-ship with prizes to be received in the ports, roadsteads, or off the beaches of the State, except in case of a forced putting into port, and such a vessel shall not receive the benefit of the 24-hour rule, but must leave as soon as the peril has passed.

The Spanish proposal is to the same effect (Article 2).

The proposal of Great Britain is more detailed. It appears to be inspired by the idea that if the prizes are not permitted to enter neutral ports and waters, the belligerent who should find it necessary to enter these waters and remain there, would readily be led to destroy the prize on the high seas. The English project gives us three articles on the special rule concerning vessels accompanied by prizes, namely, Articles 26, 27, and 29.

It is not easy to grasp in what way the treatment of a prize according to Article 26 of the British proposal differs from the treatment of belligerent war-ships.

Article 27 assimilates the prize, its officers, and crew to prisoners of war whom a body of troops might bring with them into the territory of a neutral State when they find themselves forced to cross the frontier as the result of pursuit. Only the men placed on board the prize by the captor State, whose status is the same as that of the soldiers of a belligerent who seek refuge in neutral territory, should be interned.

Article 29 provides for the case of a prize that refuses to put to sea when such refuge is not occasioned by the dangerous condition of the sea. In such a case there would be no grounds for humanitarian considerations, which dominate the provisions relative to the refuge of prizes in neutral waters.

His Excellency Mr. Tcharykow says that the delegation of Russia reserves the right to present to the committee of examination the observations which it would like to make on the subject of question X of the *questionnaire*.

Rear Admiral Siegel states that he also reserves the right to present to the said committee the comments of the German delegation on Articles 26, 27, and 29 of the British proposal.

The meeting adjourns at 12:30 o'clock.

¹ Annex 49.

[601]

Annex A**TREATY OF WASHINGTON OF MAY 8, 1871****ARTICLE 6**

In deciding the matters submitted to the arbitrators, they shall be governed by the following three rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the arbitrators shall determine to have been applicable to the case.

Rules

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Annex B**ITALIAN MERCHANT MARINE CODE OF 1877****CHAPTER VII.—*On the neutrality of the State in regard to belligerent Powers***

246. In case of war between Powers with regard to which the State is neutral, their privateers or war-ships with prizes will not be received in the harbors, roadsteads, or off the beaches of the State, except in case of being driven in by distress.

They will leave as soon as the danger has ceased. No ship of war or privateer of a belligerent may remain more than twenty-four hours in a [602] harbor or roadstead, or off the beaches of the State or in adjacent waters even when alone, except in case of being driven in by stress of weather, damage, or the want of supplies necessary for the safe prosecution of the voyage.

In no case will the sale, exchange, whether in money or kind, or gift of things captured, be permitted in the harbors, roadsteads, or off the beaches of the State.

247. Ships of war of a friendly Power, even when it is a belligerent, may enter and remain in the ports, roadsteads, and off the beaches of the State, provided that they are only employed in scientific pursuits.

248. In no case can a belligerent vessel make use of an Italian port for war-like purposes or to obtain arms or munitions.

Nor can it under pretence of repairs undertake works of such a nature as to increase its capacity for war.

249. Ships of war and privateers of a belligerent will not be supplied except with provisions and stores, and means for repairs actually necessary for the support of their crews and the safety of their voyage.

Ships of war and privateers of a belligerent which wish to take on coal cannot receive supplies of it until twenty-four hours after their arrival.

250. When ships of war, privateers, or merchant vessels of two belligerents are found at the same time in a harbor, or roadstead, or off a beach of the State, an interval of at least twenty-four hours must be required between the departure of any ship of one belligerent and that of any ship of the other. This interval may be increased, according to circumstances, by the maritime authority of the place.

251. A capture or any hostile operation between ships of belligerent nations in the territorial waters or in waters adjacent to islands belonging to the State will constitute a violation of territory.

[603]

FIFTH MEETING

AUGUST 1, 1907

His Excellency Count Tornielli presiding.

The meeting opens at 3 o'clock.

The **President** says that Mr. DE BEAUFORT has requested the floor to make a declaration concerning question VIII of the *questionnaire*.

Mr. de Beaufort takes the floor and says:

The delegation of the Netherlands finds it difficult to concur in a provision which leaves it to the neutral State to decide the order of departure of belligerent vessels within its ports. This decision may have important consequences. It will almost always be favorable to one of the belligerents and harmful to the other. The neutral State, without wishing to be so, will therefore be compelled to be partial toward one of the belligerents, a thing that may seriously compromise its position as a neutral. The delegation of the Netherlands is therefore of the opinion that we should endeavor to establish a rule, for instance, to determine the order of departure of belligerent vessels according to their order of arrival. This is a question that can be settled by the committee of examination. In any event, the Netherlands is opposed to having the matter left to the pleasure of the authorities of the neutral State.

The **President** says, in reply to Mr. DE BEAUFORT, that the committee of examination will take his declaration into account and that it will be inserted in the minutes.

Resuming the discussion, the **PRESIDENT** speaks as follows:

At the meeting of July 30 we reached question XI of the *questionnaire*,¹ which you have before you.

The question is formulated thus: "*Can belligerent war-ships effect repairs in a neutral port?*"

Two replies were made to this question. In the first place, we have Article 19 of the British project.²

The British proposal seems to make a distinction between damage resulting from a fight with the enemy and damage from some other cause. Is it really thus? If it is, what will become of a vessel which seeks refuge in neutral waters after a fight? Ought it to be disarmed and should its crew be interned, or may it, after a fixed period, put to sea again, even though it is in a dangerously unseaworthy condition?

[604] In the other case—that is to say, when the damage is not the result of a fight—the belligerent ship would be permitted, according to the English project, to make repairs only to the extent necessary for navigation.

¹ Annex 49.

² See annex 44.

Then we have the Japanese reply to the same question, contained in the first part of Article 4.¹

The Japanese proposal as it now stands differs from the English primarily in that it draws no distinction as regards the cause of the damage. It permits the making of repairs indispensable to safe navigation under all circumstances. But the Portuguese delegation² proposes an amendment to the proposal of Japan, which, if adopted, would assimilate that proposal to the proposal formulated by England. I shall therefore request the delegations interested in the maintenance of their respective proposals to be good enough to make known their ideas on the subject.

His Excellency Sir Ernest Satow observes that the British delegation has not altered its point of view in any way.

His Excellency Mr. Keiroku Tsudzuki states that the delegation of Japan accepts the Portuguese amendment.

Colonel Ovtchinnikow of the Admiralty makes the following declaration:

With regard to Article XI of the *questionnaire*, the delegation of Russia believes that it would be too much to require a neutral State to investigate the cause of the damage to a war-ship.

We believe that the authorities of a neutral port may permit a war-ship to make all the repairs that are indispensable to safe navigation without undertaking an investigation of the cause of the damage.

It is evident that repairs which restore the fighting strength of a war-ship are not permissible.

The President remarks that this exchange of views shows that there is a difference of opinion between the British delegation and the Japanese delegation on the one side, and the delegation of Russia on the other.

He proposes that the question be referred to the committee of examination for an intermediate solution. No comments having been made, it is decided to do so.

The PRESIDENT then passes to question XII reading as follows: "*What amount of provisions and coal may they take on board?*"³ and makes the following observations:

We here return to a discussion which we began at the last meeting.

Article 4 of the project of Japan⁴ says that belligerent ships may not augment their military strength in neutral ports or waters. The first part of Article 5 of the Spanish proposal likewise refers to this case. These provisions are the same as Article 248 of the Italian Code, reading: "A belligerent vessel may not under pretense of repairs undertake works of such a nature as to increase its capacity for war."

The Russian project (Article 7)⁵ draws a material distinction on this point.

The first part of the article says: "It is forbidden war-ships of belligerent [605] States during their stay in neutral ports and territorial waters to increase, by the aid of resources derived from the land, their war material or to reinforce their crew." An explanation is required on this point. May two or more vessels meeting in neutral waters tranship men, munitions, arms, etc.,

¹ See annex 46.

² Annex 50.

³ Annex 49.

⁴ Annex 46.

⁵ Annex 48.

perhaps disarming the weaker units in order to complete or even to augment the fighting strength of the others? This is the eventuality which the Russian proposal seems to contemplate. There is not merely a difference of form between the three proposals. Consequently it is necessary to debate this point before referring these various proposals to the committee of examination.

His Excellency Mr. Tcharykow says that the delegation of Russia would like to hear any comments that its text may suggest.

His Excellency Sir Ernest Satow reads the following statement:

This question is closely connected with the question of the length of stay of belligerent war-ships in neutral ports and waters.

It is undeniable that an independent neutral Power has the right in the exercise of its sovereignty to enact such provisions on this subject as it may see fit to adopt. We can state indeed that the regulations of the various Powers are very different. We must not, however, conclude from this fact that an agreement establishing common rules is impossible, in that it infringes upon the sovereign rights of the several Powers, as the same objection might likewise be raised whenever independent States conclude a treaty or similar pact.

The question of the length of stay was not brought up before the introduction of steam on war-ships. Sailing craft could remain at sea for months at a time, and it was only on rare occasions that they found it necessary to put into a neutral port to repair their masts, yards, and sails, which were their sole means of navigation. But the introduction of steam in the middle of the nineteenth century changed this state of affairs, and it seemed quite natural to count upon neutral States to allow ships to take on coal in case of need.

We must not confuse the practices of maritime law with the rules of war on land. The armed forces of a State have no right to enter the territory of another State in time of peace. To bring the laws and practices of maritime warfare into absolute harmony with the practices of war on land would *a priori* prevent a war-ship from entering a foreign port in time of peace. But no such regulations have ever been established, and it has therefore seemed entirely natural to continue in time of war to allow the right of access granted in time of peace.

When, however, a belligerent war-ship, which is not forced to take refuge in a neutral port on account of the perilous condition of the sea or because it is impossible on account of damage suffered to remain at sea, enters a port of its own free will and remains there in order to take on coal, water, or provisions, it is evident that such a vessel is using the port as a base of military operations. But the general rule prohibits such a proceeding, and it is only reasonable to make exceptions to this rule in favor of a belligerent war-ship.

The oldest regulations along these lines are the 1862 regulations of Great Britain, forbidding belligerent war-ships to remain more than twenty-four hours in an English port except in case of damage or because of the condition of the sea or some other *force majeure*.

[606] It has already been observed that this measure is at bottom strictly in conformity with what neutrality and the exigencies of naval warfare require of those who do not wish to take any part, even indirectly, in hostilities. The rule has since been adopted by Holland, Denmark, Belgium, the United States of America, Italy, Japan, Norway, and Sweden, and it is now to be found in the proposals of the Spanish delegation. The rule appears to be in

force in the majority of States whose coasts look out upon the most frequented seas and whose ports will no doubt for this very reason be frequently visited by belligerent war-ships in distress. A number of writers say that this rule has been recognized by all countries. It seems to us that it would be of great advantage if the rule were universally recognized.

If it were, belligerents would know from the very beginning of the war what to expect, and misunderstandings would be avoided.

By limiting the length of stay to twenty-four hours, the exercise of this privilege by a belligerent vessel is restricted to a reasonable length of time.

To permit a belligerent war-ship to remain in a neutral port longer than is essential for repairing the damage it has suffered or for loading coal or supplies would not fail to cause misunderstandings; and a prolonged stay which should permit the war-ships of a belligerent to come into a neutral port one after another and concentrate there would not be justified. The interest of neutral States demands that there shall be no grounds for saying that anyone of them is more favorable to the enemy than the others.

The object in view ought to be unification of the laws and customs of war, and any appearance of a preference for an arbitrary system should be avoided.

· Question XII. *What amount of provisions and coal may they take on board?*

The examination of the regulations adopted by the different nations proves to us that, in so far as the taking on of coal is concerned, there is a disposition at the present time to permit a belligerent vessel to load a sufficient quantity to enable it to reach the nearest port of its own country, or, under certain circumstances, the nearest port of a neutral State. To this has also been added the rule that the belligerent vessel must not take on coal, if it has within the three preceding months coaled in a port of the said neutral Power. The Powers that have adopted these regulations are Holland, Belgium, Denmark, the United States of America, Great Britain, Japan, Norway, and Sweden.

Italy requires that the coaling shall not take place until after the expiration of twenty-four hours from the arrival of the vessel. The practice adopted by Brazil requires the vessel not to take on more coal than is strictly necessary to enable it to continue its voyage; the coaling of a vessel intending to cruise in neighboring seas, for the purpose of capturing enemy vessels or of engaging in military operations of any kind is forbidden.

Moreover, a belligerent vessel is not permitted to coal a second time in a Brazilian port unless sufficient time has elapsed to warrant the belief that since leaving the coast of Brazil it has completed the voyage upon which it started.

A belligerent vessel is also forbidden to receive in the ports of the Republic foodstuffs shipped directly to it on board vessels of any nation whatever. Toleration of such an abuse would, in the opinion of the Brazilian Government, be equivalent to allowing belligerents to make use of its ports as bases of operation.

[607] The same theory would probably apply to the case of a vessel that might make use of a collier for the purpose of coaling.

Another restriction put into effect by Brazil consists in prohibiting the sending of telegraphic messages from Brazilian territory, announcing the coming departure or arrival of a belligerent vessel, whether a war-ship or a merchant ship.

The quantity of provisions that may be taken on board is subject in nearly all cases to the same conditions as the taking on of coal.

The observations we have made as to the situation of countries in proximity to the principal sailing routes and as to the advantage of having universal rules on the length of stay are equally applicable to the case of a war-ship that receives permission to coal.

To sum up: in order that misunderstandings may be avoided, we think that it is preferable for the Powers to come to an agreement with each other as to the conditions under which belligerent vessels would be permitted to take on supplies and coal.

His Excellency Mr. Tcharykow takes the floor and speaks as follows:

I desire to state that the delegation of Russia fully concurs in what his Excellency Sir ERNEST SATOW has had to say. We also desire the establishment of an international agreement on the length of stay of belligerent vessels in neutral ports and the supplying of these vessels with provisions and coal.

I shall not speak at present of the question of their stay, in view of the fact that it was referred at our last meeting to the committee of examination of this Commission.

I should like to confine myself to setting forth, in the name of the delegation of Russia, the reasons which brought into being paragraph 2 of our proposal, cited under No. XII of the *questionnaire*.¹

Everybody is agreed, gentlemen, that a neutral State has no right to augment the fighting strength of belligerent ships in its ports, for, if it should do so, it would be favoring one belligerent to the detriment of the other. But for this same reason a neutral State has no right to diminish the fighting strength of belligerent vessels in its ports. By doing so it would be favoring the other belligerent at the expense of the one to whom the vessel belongs. Both of these proceedings would be equally contrary to the law of nations and would constitute a breach of neutrality on the part of the State in question.

If the neutral State wishes to avoid complaints by the belligerents, it must refrain from any meddling with the private business of the foreign vessel. It must not constitute itself a judge, expert or inquisitor with regard to the vessel, as such a rôle would be fatal to its neutrality. If it really wishes to remain neutral, it must confine itself to *letting the vessel live*.

Now, gentlemen, the life of a vessel depends upon two indissoluble elements: provisions for its crew and the means of locomotion for itself. If the crew should be deprived of provisions, its members would become corpses; deprived of the means of navigation, a ship becomes a derelict. In either case the vessel perishes. It is the right of the belligerent enemy to destroy it if he is able to do so; it is neither the right nor the duty of the neutral.

These considerations lead us to the conclusion that the restrictions which a neutral State may legally impose upon the supplying of belligerent vessels in its ports with provisions, as well as with the means of locomotion, must [608] not in any case assume the proportions of an attack on the vital interests of such vessels. The neutral State which oversteps this limit in the exercise of its sovereign rights would be making itself guilty of an unfriendly act toward one of the belligerents, while it would be illegally favoring the other

¹ Annex 49.

and exposing itself in the eyes of all to the suspicion of having violated its neutrality.

Consequently, gentlemen, the "new theory," as the Brazilian Government has so aptly termed it in its remarkable statement of July 27, the theory which consists in refusing to allow belligerents to coal in neutral ports, must be very carefully examined, in order to determine to what extent it is in conformity with the hitherto recognized principles of the law of nations.

This theory has its source, not in new legal considerations, but exclusively in new technical improvements.

In the days when war-ships were propelled by sails, if some of their sails were lost or damaged, was there ever any thought of refusing to allow them to purchase material in a neutral port for repairing or replacing their sails? Certainly not, so far as I am aware. And yet in those not so far distant days sails were even more exclusively the means of locomotion of war-ships than coal is at the present time. What sail-cloth was in the past, what coal is to-day, perhaps naphtha or electricity will become to-morrow. Thus technical improvements succeed and replace one another; but they do not change the law in any respect. And we must take care not to allow ourselves to be so carried away by these improvements as to lose sight of the legal principles which fundamentally govern the matter in question.

These principles are immutable and all that we can and should do is to take the improvements into account by defining the limits within which the sovereign rights of neutral States may be lawfully exercised at present.

These rights we have unanimously recognized. Every State makes such laws for itself as it considers in harmony with its interests. Therefore we do not question the lawfulness of the various domestic statutes set forth in the proposals which have been submitted to us and which reflect in various degrees the new theory that is presented to us.

I merely wish to call your attention to the fact that, as a result of the incompatibility between this theory and the preceding legal system, this theory is not sufficient to establish a fixed rule and definitely to fix the responsibility. Some propose to allow belligerent vessels sufficient coal to reach their nearest national port; others would prefer that this should be some neutral port, or even the nearest neutral port. And the questions whether the commanding officer has the right to state his destination, or whether this right belongs to the neutral State absolutely or by agreement with the commanding officer or his Government, all these serious questions seem to be left open, so that they will become the source of considerable difficulties and embarrassment to the neutral State, which we must endeavor to avoid.

And yet, gentlemen, what neutrals desire, what we all want is to establish definite limits both as regards the demands of belligerents and the obligations and rights of neutral States. Our proposal exactly meets this twofold desideratum.

We stand with the eminent president of this Commission for mutual recognition on the part of the contracting Powers of their legislative independence in the matter of the observance of neutrality, and we desire that, in order that neutral States may avoid complaints on the part of belligerents, a limit be fixed by common agreement to their exercise of this independence; namely, the requirements of the vital interests of belligerent vessels.

[609] In view of these considerations, the delegation of Russia desires that when the committee of examination of this Commission draws up the definitive text of an agreement which we hope will be unanimous, there will be added to the second paragraph of Article 7 of our proposal the following words: "*to the extent fixed by the domestic legislation of the neutral State and within the limits required by the vital interests of these vessels.*"

The **President** observes that the remarkable exposition of his Excellency Sir **ERNEST SATOW** relates to the question of the *questionnaire*.¹ This question has been referred to the committee of examination, and Mr. **LOUIS RENAULT** has made a general announcement regarding intermediate proposals.

Again, his Excellency Mr. **TCHARYKOW**'s exposition covers all the questions in Article 12. He thinks that the committee will have to consider how it can reconcile them with the objections that have been raised to them.

Their Excellencies Mr. **Tcharykow** and Sir **Ernest Satow** consent to the reference to the committee of examination proposed by the **PRESIDENT**.

The **President** takes up the last paragraph of Article 7 of the Russian proposal² reading: "No pilot can be furnished to these vessels without the authorization of the neutral Government."

His Excellency Mr. **Hagerup** is of the opinion that the committee of examination should consider this important question of piloting, which is mentioned only in Article 7 of the Russian proposal. It is very desirable for the committee to find a satisfactory solution to this question. In his opinion, the Russian proposal on the subject is perhaps not quite sufficient, and he reserves the right to ask the committee of examination for certain explanations.

The **President** says that it was his intention to inquire whether the last paragraph of the Russian Article 7 was accepted. Should it be sent to the committee of examination?

His Excellency Mr. **Tcharykow** sees no objection to doing so.

The **President** continues, and addressing his Excellency Sir **ERNEST SATOW**, who quoted the clause of Article 249 of the Italian Code, reading: "Ships of war and privateers of a belligerent will not be supplied except with provisions and stores, and means for repairs actually necessary for the support of their crews and the safety of their voyage. Ships of war and privateers of a belligerent which wish to take on coal cannot receive supplies of it until twenty-four hours after their arrival," asks his opinion on this article. The purpose of this prescription is evident. The supply of coal that a vessel obtains in a neutral port must not enable it to carry out a military operation in which it might be engaged.

Is it proper to send this provision to the committee of examination, even though it was not presented in the form of a special proposal? I ask whether anyone has any remarks or objections to offer.

His Excellency Sir **Ernest Satow** says that he quoted Article 249 of the Italian Code because he approves its principle.

Mr. **Louis Renault** (reporter) asks Sir **ERNEST SATOW** how he thinks he can reconcile the terms of Article 249 of the Italian Code, which does not permit the delivery of coal to a war-ship until after the expiration of twenty-four

¹ Annex 49.

² Annex 48.

hours, with the provisions of the British proposal, according to which a war-ship may not remain in a neutral port more than twenty-four hours?

[610] His Excellency Sir **Ernest Satow** repeats that he accepts merely the principle of the provision in the Italian Code and that he reserves the right to discuss it in the committee of examination.

There being no objections, the **President** concludes that this article will be referred to the committee.

His Excellency **Turkhan Pasha** observes that it would sometimes be difficult to intern war-ships that seek refuge in neutral waters, as is stipulated in Article 15 of the British proposal, if the commanding officers of these vessels resisted internment. He therefore proposes that there be added to Article 15 of the British proposal (No. VII of the *questionnaire*) the words: "*and the commanding officer of the vessel shall be bound to submit to the application of this clause.*"

Commander **Burlamaqui de Moura** makes the following observations, in the name of the Brazilian delegation:

Some of the rules of neutrality in the matter of the stay of belligerent vessels in neutral ports seem to be conceived and proposed exclusively for the benefit of Powers that have ports and naval stations in different parts of the world. A belligerent not so situated would find himself condemned to a position of disastrous inferiority in comparison with the others, especially as regards the obtaining of fuel for the prosecution of his voyage. These privileged nations are very few in number. The great majority of maritime States would therefore be reduced to a condition of flagrant inequality.

We therefore deem it just that an agreement be made to the effect that the war-ships of belligerents shall be permitted to remain in the ports of neutral countries remote from the theater of operations longer than twenty-four hours in order to obtain coal for longer voyages than under the rules now in force.

The most reasonable course, in our opinion, would be not to fix a definite time limit, but to leave it to the prudence and good faith of neutrals to extend or shorten the stay according to circumstances, which are likely to vary exceedingly.

This is the solution adopted in the French Instructions of April 26, 1898, on the occasion of the war between Spain and the United States of America.¹

We hope that the Conference will deign to give the proposal that we are submitting the attention which it seems to deserve.

The **President** then passes to question XIII, which is stated as follows: "*Should a second supply be allowed in the same neutral country except after the lapse of some definite period of time?*"

Here it is a question of another limitation on supplies, proposed by Spain (Article 5, paragraph 2),² and by Great Britain (Article 18);³ that is to say, the prohibition of a second supply in the same country before the expiration of a period to be determined.

The period fixed in both proposals is three months.

We should endeavor to find a common wording.

¹ *Revue générale de droit international public*, vol. v, 1898, Documents, p. 18.

² Annex 47.

³ Annex 44.

Count de la Mortera says that the delegation of Spain concurs in the English proposal.

The President observes that in that case it is merely a question of wording, which will be settled by the committee.

[611] He passes to question XIV of the *questionnaire*,¹ reading: "*Should special provision be made for war-ships proceeding to the seat of war or being in proximity to the zone of hostilities?*"

The answers are contained in Articles 16 of the British project² and 5 of the Japanese project.³ They are in response to apprehensions that are easily understood.

It is evident that this is a question of provisions governing the conduct of neutral States and not of the treatment of belligerent war-ships in neutral ports and waters.

The Japanese project would give us, it is true, a reading that would permit us, without irregularity, to insert this provision in the regulations relative to the treatment of belligerent ships, etc. But I propose that this provision be referred to the committee of examination together with the other provisions of the British project which we are soon to examine.

Mr. de Beaufort observes that Articles 16 of the British project and 5 of the Japanese can be interpreted as an absolute prohibition. But what is to be done with a belligerent vessel that comes into a neutral port short of coal and which is refused coal?

Must it be interned?

Because of this difficulty he recommends this article to the committee of examination.

Mr. Louis Renault asks for certain explanations concerning Article 5 of the Japanese proposal. What is meant by *doubtful* or *unknown* destination? Secrecy is as a general thing indispensable for the success of military operations. Does it follow that no coal may be delivered to belligerent vessels when their destination is unknown or when there are reasons to doubt the correctness of the indicated destination? This would have the effect of calling into question the Japanese proposal which provides that a vessel may receive a certain quantity of coal in a neutral port. He does not wish to start a discussion on the matter; he is merely asking for information.

His Excellency Mr. Keiroku Tsudzuki replies that in formulating this article the delegation of Japan was inspired by the idea that belligerent vessels would not have the right to use neutral ports as a stopping place on the way to the theater of war, just as the armies of belligerents are prohibited from making use of neutral territory in order to reach the territory of the enemy. To use neutral ports as a stopping place on the way to the theater of war is, in our opinion, essentially the same thing as to use it as a base of operations. Belligerent vessels will have to make known their destination, if they desire to obtain a supply of coal, so that the authorities of neutral countries may be in a position to know how much coal they should allow these belligerent vessels to take on board.

In this connection, we do not understand why these vessels should not be

¹ Annex 49.

² Annex 44.

³ Annex 46.

obliged to tell their destination to the authorities of neutral countries, if they desire to enjoy the hospitality of neutral ports. If belligerent vessels do not inform neutrals of their destination by giving them sufficiently clear explanations, these vessels will suffer the consequences, and we do not see why they should not suffer for what they alone are responsible for. Neutral Powers must under such circumstances have the right to take such measures as are necessary for the protection of their neutrality.

The President replies that this discussion should be taken up with the discussion of the other provisions of the British and Japanese projects governing the rights and duties of neutrals.

[612] We have reached question XV of the *questionnaire*:¹ "*How should belligerent war-ships be dealt with for not conforming to the rules as to the duration and conditions of their stay in neutral ports and waters?*"

In response to this query, we have Articles 14, 21, 22, 23, 24, and 29 of the English project,² and Article 6 of the proposal of Japan.³

Although differently formulated, these two replies seem to contain substantially the same provisions. It is a question in all these provisions of measures to be taken by the State, which must see to the observance of its neutrality law; consequently we shall postpone the examination of these proposals. It will, I think, suffice to read question XVI to recall that the two provisions of Article 4 of the British project and of Article 7 of the Japanese project, containing the same prescription, should appear in the section of the regulations concerning the rights and duties of neutral States in naval war.

We have in the amendments presented by the Portuguese delegation⁴ a proposal to replace these two articles by the following provision:

In general the neutral State should prevent by all the means in its power the belligerents from committing in its territorial waters acts which may constitute war assistance for the combating forces.

In the discussion the amendments will necessarily follow the articles to which they relate.

The PRESIDENT continues: We have exhausted the *questionnaire* which the reporter of our subcommission has prepared for us, and we can now, in the fulness of knowledge, thank him for this admirable piece of work, which has enabled us to untangle a skein which at the start seemed to be hopelessly snarled. I therefore propose, gentlemen, that we manifest our gratitude to Mr. LOUIS RENAULT. (*Loud applause.*)

The proposal made at our last meeting by our esteemed colleague, Mr. HAGERUP, that there be added to the *questionnaire* the query: "*Is it necessary to apply the same rule to territorial waters as to neutral ports?*"⁵ brings us now to the consideration of the answers which our distinguished colleagues who are specially interested in this question will probably wish to set forth more fully.

His Excellency Mr. Hagerup wishes to add a few explanations to those he presented at the preceding meeting. There are differences of fact and of law between ports and territorial waters.

¹ Annex 49.

² Annex 44.

³ Annex 46.

⁴ Annex 50.

⁵ Annex 51.

Differences of fact appear both in the matter of control and in the measures of resistance that it is possible to take.

There are countries which have a very long coast-line, thinly settled and well supplied with islands and rocks, like Norway, for example. It is evident that the State cannot exercise an effective control in territorial waters like these.

Ports are entirely under the jurisdiction and sovereignty of the State, which may forbid any ship to enter.

In territorial waters, on the contrary, innocent passage of vessels is permitted even in time of war.

The boundaries of a port are well defined; there is no doubt with respect to them. Such is not the case with territorial waters, in regard to which there is no general agreement. This indefiniteness exists, moreover, in law and in fact.

These differences must necessarily exert an influence in time of war upon the rules governing ports and territorial waters.

[613] This is especially evident in the matter of the duties of neutrals. If it can be prescribed in the case of neutral territorial waters, just as in the case of neutral ports, that belligerents must not make use of them for military operations, the consequences to neutrals of a violation of these rules cannot be the same in both cases. If a neutral tolerates the use of its ports by either of the belligerents, it would be a violation of neutrality; but the mere fact that a neutral has been unable to prevent a belligerent from making use of its waters cannot be so regarded. In the first place, the neutral which wishes to protect its waters would in many cases find itself in doubt as to the boundaries of its territorial waters.

Then the means of preventing such a violation of territorial seas are much more difficult to find than in the case of ports.

There are other differences: the rules fixing the length of stay of a war-ship in a neutral port cannot be established for territorial waters. It is very difficult to determine when a vessel enters and when it leaves territorial waters.

If it is admitted, as the Japanese delegation proposes, that no more than three war-ships belonging to the same belligerent may remain simultaneously in a port, this prohibition cannot be applied to territorial waters, which may include several hundred miles.

The rules proposed by the delegations of Germany and of Japan as to the internment and disarming of vessels that remain more than twenty-four hours cannot be applied to territorial waters. It is difficult to intern or disarm them in ports—and I shall vote against such a rule even in the case of ports—but how is it possible for certain States which have a small navy or even no navy at all to intern or disarm in their waters vessels of the "dreadnaught" type?

Finally, neutral States are required to exercise "due diligence." The meaning of this expression evidently varies according as it is applied to ports or to territorial waters.

As he stated at the last meeting, Mr. HAGERUP does not wish to formulate a special proposal. His point of view has already been accepted by the delegation of Russia, which has introduced in its project the correct distinction between ports and territorial waters.

The President observes that his Excellency Mr. HAGERUP has not formu-

lated a proposal. His observations not having called forth any objections, he thinks that they should be referred to the committee of examination.

As has been frequently repeated in the course of the discussion which has already taken place, we have still before us a certain number of proposals which, although they are not within the compass of the rules governing belligerent war-ships in neutral ports and waters, might nevertheless be inserted in a convention embracing the rights and duties of neutral States in naval war.

In the short address that I had the honor to deliver at the opening of this debate, I expressed the opinion that we might consider ourselves authorized to share the British delegation's view to the effect that our subcommission is competent to examine also proposals which have been presented to us on the subject of the rights and duties of neutral States.

If, however, there should be different opinions on this matter, I would ask that those opinions be made known.

No one taking the floor, the **President** says:

[614] Articles 3, 4, 5, 7, 8, 14, 16, 21, 22, 23, 24, 29, 31, and 32 of the British project¹ and Articles 6 and 7 of the Japanese proposal² were set aside to be inserted in a special chapter on the rights and duties of neutral Governments.

The time has come to consider them.

I think that the general declaration proposed by the Russian delegation and the amendment of the delegation of Brazil, which was distributed among us this morning,³ might also be taken up in this part of our work.

We are going to follow the order of the British proposals, to which the proposals of Japan and of Brazil can, it would seem, be regarded as amendments.

The **PRESIDENT** opens the discussion on Article 3 of the British proposal, which he reads.

His Excellency Sir **Ernest Satow** explains that this article prohibits the sale of war-ships, either directly or indirectly, to a belligerent State.

Instances of indirect sales have frequently occurred in recent wars.

His Excellency Mr. **van den Heuvel** makes a remark on the phraseology. It is not a question of the sale, but of the delivery of the vessel, for the seller may keep it in his possession.

The **President** says, in reply, to his Excellency Mr. **VAN DEN HEUVEL** that the committee of examination will take this observation into account. He passes to Article 4 of the British proposal.

Mr. **Vedel** speaks as follows:

The Danish delegation would greatly have preferred it if Article 4 had been confined to providing that the neutral State may not allow its territorial waters to be used for the purpose therein mentioned, but it thinks that in any event it would be desirable to restrict the neutral's obligation to do *all in its power* to prevent a belligerent from committing hostile acts therein. As formulated, the article lends itself to the interpretation that the neutral State would not have done its duty if it had not brought its armaments up to the *absolute maximum* that the country is in a position to furnish. In a naval war there are often a great many countries which may expect a belligerent fleet to approach their ter-

¹ Annex 44.

² Annex 46.

³ Annex 52.

ritorial waters, so that the article, if accepted without amendment, would be equivalent to an invitation to many maritime Powers to increase their armaments to the greatest possible extent. Under these circumstances, the delegation is led to the belief that the article should at least be amended so as to make it clear that the neutral State's obligation does not exceed what may reasonably be required of it, duly taking into consideration the means and resources of the country.

These observations apply *mutatis mutandis*—likewise to Article 9 of the British project.

The President says that Mr. VEDEL has not presented an amendment and that his observations will be referred to the committee of examination.

He then passes to Article 5 of the British proposal, which he reads. In his opinion, the Brazilian amendment, which he also reads, belongs to this article. He declares the discussion open.

His Excellency Mr. Louis Drago takes the floor and says:

The delegation of the Argentine Republic regrets that it is obliged to vote against the proposal of the Brazilian delegation relative to the delivery of [615] war-ships under construction in a neutral country to the belligerent who ordered them six months before the outbreak of war. The delegation of Brazil bases its amendment, it would seem, upon the theory that a vessel under construction belongs to a certain degree to the regular naval forces of the State that is having it built and that it cannot be justly deprived of an element of defense which it did not intend, at the time the order was placed, to use against any specific enemy.

I must state that in reality the Brazilian amendment upsets all existing conceptions on the subject. From the laws of the United States of 1794 and 1819, which punish all persons who fit out and arm for a foreign State any vessels, with the intent that they shall be employed against another Power at peace with the American Union, to the Treaty of Washington of 1871, with its three well-known rules, which were followed by the projects of the Institute of International Law on the duties of neutrals (Hague session of 1875), it has been recognized, without the slightest opposition thereto, that delivery after war has broken out of a vessel under construction ordered by a belligerent would be a typical case of violation of the duties of neutrals.

If a war-ship already incorporated in the fleet of a belligerent is permitted to remain in neutral ports for a very limited length of time and only for the purpose of taking on supplies, how can a vessel under construction, belonging to this same belligerent, be allowed to be completed, armed and fitted out in the territorial waters of a nation at peace with the two combatants, without its being a violation of neutrality?

The building of a war-ship ordered by a belligerent would, if the vessel should be delivered when ready, constitute a real military operation in the territorial waters of a neutral State.

This single consideration makes it unnecessary for me to enter into the details of the Brazilian project and to point out all the dangers which the determination of the date of the order would involve, which would be at the mercy of the shipyards.

The past century has seen the progressive growth of the sincere spirit of impartiality required of neutrality, whose duties flow primarily from mutual

respect and good-will among States, and this is one of the important steps forward made by international law in recent years. It would indeed be a very sad omen for this Peace Conference, if it should take a step backward in the matter of principles and practices, which seemed to be fixed forever, by accepting the Brazilian proposal.

I shall confine myself to discussing the question of principle, as I cannot enter into considerations of a political nature, which are nearly always of transitory interest.

Commander Burlamaqui de Moura reserves the right to answer the considerations presented by Mr. DRAGO at a subsequent meeting of the subcommission.

The President officially acknowledges Mr. BURLAMAQUI DE MOURA's declaration.

Mr. Louis Renault points out that the last part of Article 5 of the British project deals with a question which the Fourth Commission is taking up, that is to say, the conversion of merchant ships into war-ships and the place where such conversion may be effected.

The President replies that this question cannot be dealt with while it is under discussion by another Commission. It is the business of the committee of examination to coordinate questions which overlap.

[616] He then reads Articles 7 and 8.¹ He thinks that the two articles, which seem to have the same object, should be combined.

After an exchange of views between the President and his Excellency Sir Ernest Satow it is decided to refer the question to the committee of examination.

Mr. Louis Renault asks the British delegation what it means by the word "diligence." The United States and Great Britain did not both accept the interpretation put upon this term by the Geneva tribunal, and that is why the three rules of Washington were not communicated to the Powers. It must therefore be made clear what meaning is attached to the word "diligence."²

Mr. Georgios Streit joins in the observations which Mr. LOUIS RENAULT has just made and desires in addition to call the subcommission's attention to the difficulties of interpretation and application which the last part of this article can give rise to. In any event, the obligation which this article imposes upon neutrals, seems to be a very heavy one and not sufficiently definite. He reserves the vote of the Hellenic delegation on this article, as well as on Articles 3, 5, and 7 of the British proposal.

The President, intervening in the debate, remarks that certain expressions, when they have received, so to speak, an official interpretation on a noteworthy occasion, acquire a meaning which everybody is ready to accept. Such is the case with the words "due diligence," which at the time of the Geneva award gave rise to an argument on which judgment was rendered. We should therefore endeavor to discover whether in the articles that are now being examined these words are used in their usual sense, which is susceptible of several shades of interpretation, or in the technical sense given them by the Geneva decision. The committee of examination will then deal with the question.

The PRESIDENT then proceeds to read Article 14 of the British project and Article 6 of the Japanese proposal.³

¹ Annex 44.

² See fourth meeting, annex A.

³ Annex 46.

He remarks that it is true that a neutral State may find it impossible to compel a huge fighting ship to leave and, in case of refusal, to intern and disarm it, especially if this vessel is moored in its territorial waters; but in the section of the regulations governing the question of belligerents in neutral waters, it is stated that it is the duty of these vessels to respect the rules imposed upon them. If they do not observe these rules, they commit a serious infraction, and the neutral State must protest against the violation of its rights, as in other cases in which a State suffers acts of violence at the hands of another State.

His Excellency Mr. **Hagerup** is opposed to the obligation contained in the above-mentioned articles of the British and Japanese proposals. The obligations imposed upon neutrals by the articles under discussion would in many cases be impossible of fulfilment.

Mr. **Vedel** concurs in his Excellency Mr. **HAGERUP**'s point of view.

Colonel **Ovtchinnikow** of the Admiralty thinks that before taking up the treatment of war-ships that do not conform to the rules governing their stay, the Commission must first of all reach an agreement upon these rules.

The **President** passes to the reading of Articles 16, 21, 22, 23, 24, 29, and 31 of the British project.

[617] When the text of Article 31 of the British project¹ is read, Mr. **Guido**

Fusinato observes that the provision contained in this article has already given rise to an exchange of views in the Fourth Commission.

After various observations by Mr. **Louis Renault** and his Excellency Sir **Ernest Satow**, it is agreed that the committee of examination shall take into account the circumstance which has been opportunely pointed out.

After the reading of these articles, the **President** takes the floor and speaks as follows:

The common rules which we have just examined on the last reading concern the rights and duties of neutral States and should form a chapter of the regulations which we are elaborating.

Of the other provisions which we have studied in the order of the *questionnaire* and which govern the question of belligerent war-ships in neutral ports and waters, we can retain, for insertion in the regulations, those upon which we are agreed.

We have, gentlemen, traversed a rather long road at a very rapid pace. We must now consider the general form to be given to our work.

I think that we must go back to the general principles which I had the honor to proclaim before you at the outset as the basis of the arrangement which we are called upon to conclude.

This arrangement must therefore contain the following precepts:

(1) The signatory Powers mutually and formally recognize their legislative independence, in so far as observance of neutrality is concerned. This absolute freedom is, however, tempered by the mutual engagement to regulate in a uniform manner certain points upon which the Powers find they are in agreement. As it is impossible to reach an agreement upon the other points which we have examined, we can lay down no rules on these points.

(2) Each State agrees to apply impartially to all the belligerent Powers the laws that it enacts.

(3) The signatory Powers mutually bind themselves not to modify or change their laws in the matter of observance of neutrality while there is a state of war between two or more of them.

¹ Annex 44.

(4) It is the duty of belligerents to respect the laws of neutral Powers.

I think, gentlemen, that in entrusting to the committee of examination the task of embodying these general principles in the common rules which the States represented at this Conference may accept, we shall have done all that could be expected of us.

I propose that we appoint the committee of examination which will undertake this task.

The bureau of the subcommission shall form a part thereof *ex officio*. Italy, Germany, and France are represented in the bureau.

It seems to me that we should invite the countries that have submitted projects or amendments to be represented on the committee. Brazil, Denmark, Spain, Great Britain, Japan, Norway, Portugal, and Russia would therefore be requested to send a delegate to this committee. I ask these respective delegations to make known the names of their delegates.

Read Admiral Siegel says that the discussion on the subject of belligerent war-ships in neutral ports and waters and on the rights and duties of neutral States in naval war, which has just ended, was rather a general exchange of views relative to the principles of this question than an exhaustive examination, whose conclusions should serve as a basis for the text of the Convention. Therefore the fact that a number of articles called forth no opposition cannot be regarded as assent thereto.

The German delegation reserves the right to make clear before the committee of examination its point of view concerning the various questions treated and to propose amendments to that committee.

The meeting adjourns at 5:15 o'clock.

MEETINGS OF THE COMMITTEE OF EXAMINATION OF THE SECOND SUBCOMMISSION OF THE THIRD COMMISSION

SEPTEMBER 11 AND 12, 1907

His Excellency Count **Tornielli** presiding.

The meeting opens at 10 o'clock.

The **President** points out that in the "Draft Convention concerning the rights and duties of neutral Powers in naval war," which was distributed among the members of the committee, the amendments presented in the course of the examination on the first reading have been taken into account as far as possible. The **PRESIDENT** pays tribute to the zeal and great ability of the eminent reporter, Mr. **LOUIS RENAULT**, who has drawn up the draft Convention.

It may be that certain omissions have inadvertently slipped in, but it will be easy to remedy this in the course of the discussions.

He then reads paragraph 1¹ of the preamble, worded as follows:

With a view to harmonizing the divergent views which are still held on the relations between neutral Powers and belligerent Powers, and to anticipating the difficulties to which such divergence of views might give rise;

which is adopted without comment.

In connection with paragraph 2, reading as follows:

Seeing that, even if it is not possible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame, as far as possible, rules of general application to meet the case where war has unfortunately broken out between some of the signatory Powers;

Mr. **Louis Renault** (reporter), in order to take into account certain observations that have been made to him with regard to this paragraph, remarks [620] that the words "between some of the signatory Powers" seem to settle a delicate question. Is it necessary that both of the belligerent Powers should be signatories in order to make the Convention applicable, or would it also be effective, as far as neutrals are concerned, if one of the belligerent Powers was a signatory?

It would seem that the question should not be prejudged and that the article should be given a more impersonal form.

His Excellency Mr. **Tcharykow** fully concurs in the reporter's observation. The latter then proposes simply the omission of the words "between some of the signatory Powers."

Paragraph 2, thus modified, is then adopted.

The **President** reads paragraph 3:

¹ Annex 63.

Seeing that, in cases not covered, it is expedient to take into consideration the general principles of the law of nations;

His Excellency Sir Ernest Satow asks whether the term "cases not covered" means "cases not covered up to the present time" or "cases not covered by the present Convention."

The Reporter explains that, in his opinion, this expression means "cases not covered by the present Convention."

At the request of his Excellency Sir Ernest Satow, the words "by the present Convention" will be inserted after the words "cases not covered."

The new text of Article 3 is adopted.

Paragraphs 4 and 5, worded as follows:

Seeing that it is desirable that the Powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them;

Seeing that it is, for neutral Powers, an admitted duty to apply these rules impartially to the several belligerents;

are adopted without comment.

The President then reads paragraph 6:

Seeing that, in this category of ideas, the rules should not, in principle, be altered in the course of the war, except in a case where experience has shown the necessity for prescribing stricter measures for the protection of neutral rights;

His Excellency Sir Ernest Satow inquires whether the expression "for the protection of neutral rights" refers to the rights of neutrals in general, or whether this phrase simply means that the neutral may adopt stricter measures for the protection of his rights.

Mr. Renault says that to his mind the latter interpretation is the correct one.

The neutral, who, in his declaration of neutrality, has accorded belligerents certain privileges, may subsequently curtail them in his own interest, but only for the protection of his rights.

His Excellency Mr. Tcharykow presents, in the name of the delegation of Russia, reservations with regard to the second sentence of this paragraph. In his opinion, the neutral State should be entirely free to prescribe all rules necessary for the protection of its rights, and no limitation can be recognized in this respect.

Rear Admiral Siegel supports the ideas expressed by his Excellency Mr. TCHARYKOW. He does not believe that this sentence is necessary, especially in view of the fact that Article 26 expressly reproduces the same provision. [621] The President expresses the opinion that the second sentence of paragraph 6 of the preamble does, as a matter of fact, make Article 26 superfluous. It was, however, deemed necessary to mention in the preamble that, as a general thing, the rules of neutrality may not be modified by a neutral during a war. When, however, a neutral sees his neutrality in danger, he must be allowed to adopt stricter measures. In view of the divergent opinions, the PRESIDENT suggests that the committee proceed to a vote.

His Excellency Mr. Tcharykow points out the difficulty of putting a paragraph of the preamble to vote. If unanimity is not obtained, the paragraph is bound to be stricken out. As for himself, he approves the paragraph minus the

words he has indicated; if they should be retained, he would propose that the entire paragraph be omitted.

His Excellency Sir **Ernest Satow** observes that the committee has discussed at length the necessity that may arise of prescribing restrictions in the course of a war, a necessity that is based upon the experience of history. He proposes that the second sentence be left intact, or else that the entire sixth paragraph of the preamble be omitted.

His Excellency Mr. **Tcharykow** asks whether the British delegation can concur in the following wording of the second sentence: "*except in a case where experience has shown the necessity for such change for the protection of the rights of that Power.*"

His Excellency Sir **Ernest Satow** states that he prefers the present wording, for he cannot imagine cases where it would be necessary for a neutral to adopt less stringent measures.

His Excellency Mr. **Tcharykow** believes such an eventuality possible and therefore maintains the text which he has proposed.

His Excellency Sir **Ernest Satow** repeats his observations and expresses the wish that, if the paragraph is omitted, the minutes shall mention the English doctrine, which recognizes that it may be necessary for the neutral to enact stricter rules of neutrality during the course of a war.

The **President** says that the committee has three proposals before it:

- (1) Omission of paragraph 6 in its entirety;
- (2) Omission of the second sentence of this paragraph, that is to say, beginning with the words "except in a case . . .";
- (3) Omission of the words, "for prescribing stricter measures."

The **Reporter** suggests that, in order to meet the wishes of his Excellency Sir **Ernest Satow** the words, "of neutral rights," be replaced by "the rights of that Power," and that the words, "by a neutral Power," be inserted after the expression, "in the course of the war."

The **President** then puts paragraph 6 to vote in the following form:

Seeing that, in this category of ideas, these rules should not, in principle, be altered in the course of the war by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power.

This paragraph is adopted by 12 votes to 2—Great Britain and Japan.

His Excellency Sir **Ernest Satow** requests that mention be made of the [622] fact that, in his opinion, it is inconceivable that a neutral State would ever be obliged to adopt *less* stringent measures in the course of a war in order to protect its rights, but that English doctrine has always recognized the fact that neutrals have the right to enact stricter measures for this purpose.

His Excellency Mr. **Keiroku Tsudzuki** desires that the same remark be inserted in the minutes in the name of the delegation of Japan.

The **President** then reads paragraph 7, worded as follows:

To this end the high contracting Parties have agreed to observe the following common rules, which cannot however modify provisions laid down in existing general treaties, to wit:

The Reporter proposes that, in accordance with the suggestion just made by his Excellency Mr. HAMMARSKJÖLD, the words, "to this end," be stricken out.

This proposal and paragraph 7 are adopted without comment.

The President then reads Articles 1 and 2¹:

ARTICLE 1

Belligerents are bound to respect the sovereign rights of neutral States and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any State, constitute a violation of neutrality.

ARTICLE 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral State, constitutes a violation of neutrality and is strictly forbidden.

which are adopted successively without comment.

In connection with Article 3:

When a ship has been captured in the territorial waters of a neutral State, this State must take the necessary measures, if the prize is still within its jurisdiction, to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral State, the latter addresses the belligerent Government, which must liberate the prize with its officers and crew.

His Excellency Mr. Hagerup remarks that on the first reading it was decided to replace the words, "take the necessary measures," by the words, "employ . . . the means at its disposal."

This substitution being accepted, the first paragraph of Article 3 is adopted.

Rear Admiral Siegel then makes the following observations concerning the provision of the second paragraph:

By the terms of this second paragraph, the neutral State in whose waters a vessel has been captured must, if the prize is no longer within its jurisdiction, address the belligerent Government, which must release the prize, together with its officers and crew. The neutral State must therefore in all such cases employ diplomatic measures to have the wrong that has been done it redressed.

[623] But the question has been decided in a different way in the project concerning the International Prize Court. Article 3 of that project says:

The judgments of national prize courts may be brought before the International Prize Court:

1. When the judgment of the national prize courts affects the property of a neutral Power or individual;

2. When the judgment affects enemy property and relates to:

- (b) An enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim.

The report contains the following observation with regard to this provision:

There is another case in which a neutral Power may intervene to safeguard its sovereignty. This is when it is alleged that the capture of an enemy ship has taken place in its own territorial waters. In such circumstances the neutral Power may choose between two procedures. It may select the diplo-

¹ Annex 63.

matic channel and address itself directly to the Government of the captor in order to obtain satisfaction; or it may leave the owner of the captured ship, if the legislation of the captor permits, to take his complaint of the irregularity of the seizure before the national tribunals, and then, if in spite of his so doing the irregularity is not admitted, it may take the matter to the International Court.

To harmonize the two projects, it is therefore necessary to change the wording of paragraph 2, so that the neutral State may have a choice between a claim through diplomatic channels and an appeal to the International Court.

His Excellency Sir **Ernest Satow** asks what would happen, if paragraph 2 were omitted, to a prize taken in the territorial waters of a neutral State by a belligerent who has not signed the Prize Court Convention; through what legal channel should this neutral take action to have his neutrality respected? With the present text the owner has two chances of having his property restored.

His Excellency Mr. **Tcharykow** is of the opinion that it would be preferable to strike out the paragraph in question, which was drawn up before the adoption of the Convention concerning the Prize Court.

The **Reporter** explains that, if the captor is a signatory of the Prize Court Convention, the neutral State may choose between recourse to the Court and diplomatic channels; if, on the contrary, the captor is not a signatory of the aforesaid Convention, the neutral State may make claim only through diplomatic channels.

It would be better, perhaps, to strike out paragraph 2, explaining in the report the reasons for this omission.

The **President** remarks that, in order to meet the wishes of his Excellency Sir **Ernest Satow**, who asks that the paragraph be retained so as to avoid leaving a gap, it would perhaps be sufficient to replace the expression, "the latter addresses the belligerent Government," by the following, "the latter may address."

His Excellency Sir **Ernest Satow** observes that it is necessary for the neutral to address the belligerent Government, for this paragraph has also the effect of giving a certain guaranty to the belligerent State whose rights have been disregarded. He recalls that the Prize Court Convention was voted with 15 abstentions. It is therefore likely that there would be many cases in which recourse could not be had to that tribunal.

[624] His Excellency Mr. **Hammar skjöld** requests the retention of the paragraph with the change proposed by the **PRESIDENT**. He thinks it advisable to mention expressly in this Convention the obligation of releasing the prize, together with its officers and crew, and not to refer to another Convention.

Rear Admiral **Siegel** accepts the expression "may address."

The **President** puts to vote the text of the second paragraph of Article 3 of the draft:

There are 6 yeas, 6 nays, and 2 abstentions.

Yeas: Brazil, Spain, Great Britain, Italy, Japan, and Turkey.

Nays: Germany, Denmark, France, Netherlands, Russia, and Sweden.

Abstentions: United States of America, Norway.

The committee then votes on the modified text, which is as follows:

If the prize is not in the jurisdiction of the neutral State, the latter may address the belligerent Government, which must liberate the prize with its officers and crew.

There are 9 yeas, 4 nays, and 1 abstention.

Yeas: Germany, Denmark, France, Italy, Norway, Netherlands, Russia, Sweden, and Turkey.

Nays: Brazil, Spain, Great Britain, and Japan.

Abstentions: United States of America.

The President reads Article 4, worded as follows:

A prize court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

This article is approved without discussion.

The President then reads Article 5:

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any other apparatus for the purpose of communicating with the belligerent forces on land or sea.

He remarks that this article constitutes a provision similar to that which has been adopted respecting war on land.

Sir Ernest Satow inquires whether there has not been an inadvertent omission. At the meeting of August 26 he proposed, in effect, that the provision contained in Article 10b¹ of the British proposal should be added to the article in question.

This addition was approved by 10 votes to 4, with 1 abstention.

[625] The President thinks that perhaps the provision in question, which treats of the replenishment of supplies, should rather be made part of Article 18 of the draft Convention.

His Excellency Sir Ernest Satow says that, as he recalls it, it was decided to make this a part of Article 5.

The Reporter states that this was indeed decided upon at the meeting of August 26, but that the delegation of Russia had formulated reservations on the subject.

His Excellency Mr. Tcharykow thanks the reporter and states that he maintains contingently the reservations to which attention has been called.

After an exchange of views by the President, his Excellency Mr. Tcharykow, his Excellency Sir Ernest Satow, and the Reporter, it is agreed that Article 10b of the British project shall be made the subject of a new Article 5 bis, his Excellency Mr. TCHARYKOW and Rear Admiral SIEGEL having made known the fact that they would be obliged to reject Article 5 in its entirety, if Article 10b were added to it in the form of a new paragraph.

The new Article 5 bis would therefore be worded as follows:

Belligerent vessels are likewise forbidden to revictual in neutral waters by means of auxiliary vessels of their fleet.

There being no opposition to Article 5, the President declares it adopted.

He then puts the new Article 5 bis to vote.

This article is adopted by 5 yeas to 3 nays, with 6 abstentions.

The President then reads Article 6:

¹ Annex 44.

The supply, in any manner, directly or indirectly, by a neutral State to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

No objections being raised to this article, it is declared adopted.

The President then passes to Article 7, reading as follows:

A neutral State is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

This article also is adopted after an exchange of explanations by Sir Ernest Satow, the President, and the Reporter as to the retention of the words "to an army." It is recognized that there can indeed be no doubt of the right to export or to convey by sea munitions or material necessary to an army.

The President then reads Article 8:

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming within its jurisdiction of any vessel which it has reason to [626] believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, this vessel having been adapted entirely or partly within the said jurisdiction for use in war.

This article is adopted without discussion, as is also Article 9, after it is decided to add the words, "roadsteads or territorial waters," after the words, "admission into its ports."

Article 9 would therefore read as follows:

A neutral State must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral State may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.

On his Excellency Sir ERNEST SATOW's observing that he would like to see the principle upheld in this article that a neutral State may always forbid belligerents to enter its ports, the Reporter observes that the object of paragraph 2 of Article 9 is simply to explain the deviation from the rule of equality of treatment of belligerents by the neutral laid down in paragraph 1.

The object of the provision contained in paragraph 2 is to define the right of the neutral State to withdraw from that one of the belligerents which may have violated the prescriptions of neutrality, the privilege of entering its ports, while continuing to allow that privilege to the other belligerent. The right of the neutral State to forbid belligerents in general to enter its ports is not in question in Article 9, but follows from its right to enact general prescriptions and prohibitions.

The President then reads Article 10, which is worded as follows:

The neutrality of a State is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

His Excellency Mr. HAMMARSKJÖLD states that he reserves his opinion on this article until after the reading of the explanations that will be made regarding it in the report.

Mr. Vedel makes the same reservation.

His Excellency **Turkhan Pasha** states that Article 10 being a reduction of Article 32 of the English proposal contained in the "Questions involved in the propositions made by the Japanese, Spanish, British, and Russian delegations,"¹ he reiterates, with regard to this article, the declaration that he made in the name of the Imperial delegation at the meeting of July 30, which declaration appears in the minutes of that meeting, and requests the eminent reporter to be good enough to insert the text thereof in his report.

Rear Admiral **Sperry** states that he makes the same reservations with regard to this article that he has already made in the name of his delegation.

The President officially acknowledges these reservations, which will be mentioned in the minutes and in the report. It is likewise understood that the votes of Sweden and Denmark are reserved until after the reading of the report. Article 10 is adopted under these conditions.

[627] The President then reads Article 11:

A neutral State may allow belligerent war-ships to employ its licensed pilots.

This article is adopted without discussion, after Rear Admiral **Siegel** has stated that he must reserve his opinion on this article until after the reading of the report.

The President passes to Article 12, worded as follows:

In the absence of special provisions to the contrary in the law of a neutral State, belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State (situated in the immediate proximity of the theater of war) for more than twenty-four hours, except in the cases covered by the present Convention.

He remarks that the words "situated in the immediate proximity of the theater of war" have been placed in parenthesis because the discussion on this point has not yet resulted in any definite action.

His Excellency Sir **Ernest Satow** would like certain explanations as to the scope of the expression, "special provisions to the contrary in the law of a neutral State." Does this constitute an unlimited privilege in favor of the neutral State?

The President replies that the meaning is as follows: If there is no special law enacted by the neutral State, the 24-hour law is the rule. It is naturally lawful for the neutral State to specify some other time limit; but the wording of the article makes it obligatory for States which do not want the 24-hour rule to establish a special rule of their own.

Rear Admiral **Siegel** then asks permission to set forth more completely than he was able to do at the time of the first reading the considerations in explanation of what the German delegation means by the expression, "theater of war."

As these considerations must serve as a statement of reasons for the amendment which the German delegation will submit, they are prefixed to that amendment.²

His Excellency Mr. **Tcharykow**, in the name of the delegation of Russia, warmly supports in its entirety this proposal which was submitted with a view to conciliation. There is a very great divergence between the two doctrines before the committee. It is therefore extremely desirable to reach a compromise,

¹ Annex 49.

² Annex 64.

which would consist in a very strict limitation of the length of stay in the vicinity of the theater of operations and in leaving to neutrals freedom of action in all other regions. It is plain that, if a war is being waged on the Pacific, there is no need of limiting the stay in the neutral ports of the Mediterranean. If these principles could be unanimously accepted, a result greatly to be wished for would be attained.

His Excellency Sir **Ernest Satow** thinks that the expression, "proximity of the theater of war," is very difficult to define. There are, as a matter of fact,

Powers which have squadrons or war-ships in every sea. For them the [628] theater of war includes every sea. In the second place, neutrals may have different notions respecting the term proximity, and in that case two neutrals, for example, would observe different rules of neutrality. Finally, in modern wars very little time is required for changing the theater of war. For instance, hardly a week is necessary for a squadron to pass from European to American waters. In this case neutrals would therefore have to be continually changing their rules of neutrality, according to the movements of enemy squadrons. Finally, it must be noted that the theory of proximity is in contradiction with the right of belligerents to effect a capture. His Excellency Sir **ERNEST SATOW** recalls that the British delegation asked that the words "proximity, etc.," in the draft under discussion should be stricken out.

This omission was voted. The British delegation therefore cannot accept the restoration of the phrase.

His Excellency Mr. **Keiroku Tsudzuki** wishes to remark that, in case of war between two western Powers, as nearly all of them have possessions in the Far East, Japan will always be in proximity to the theater of war.

Rear Admiral **Siegel** replies that it is for the neutral to decide the question.

Mr. **de Beaufort** states, in the name of the delegation of the Netherlands, that he cannot concur in the distinction between ports situated in proximity to the theater of war and other ports.

The expression "in the proximity of the theater of war" is exceedingly vague, first, because the words "in the proximity" are by themselves very indefinite, and also because the theater of war is extremely difficult to define.

Mr. **DE BEAUFORT** thinks, therefore, that this distinction is likely to cause neutrals difficult complications.

The President observes that Article 12 refers only to the case of a war-ship entering a neutral port for no specific purpose.

The project contains, on the other hand, articles covering the case of belligerent war-ships entering neutral ports for a specific purpose, to repair damage, take on coal, etc. May we not ask ourselves whether it would not be of advantage to omit Article 12 altogether?

His Excellency Mr. **Tcharykow** seconds this suggestion of the **PRESIDENT'S**, because he does not believe that the committee will reach an agreement on this article and also because it is of as little interest to the neutral as to the belligerent to have a limited time, fixed in advance, for the stay of a belligerent ship in a port which it enters for no specific purpose.

His Excellency Sir **Ernest Satow** states that he cannot concur in this.

His Excellency Mr. **Hammarskjöld** would like to have sanctioned in this Convention the right of the neutral to restrict the stay of a belligerent vessel in his port, a right that seems to be the necessary consequence of Article 9, without, however, expressing any opinion as to the omission or retention of Article 12. But would it not be possible, if occasion should demand, to define the right of

the neutral State to limit the stay of belligerent vessels in its ports, roadsteads, etc., by inserting, in Article 9, the word "stay" after the word "admission"?

His Excellency Mr. Tcharykow is very willing to accept this suggestion, which is in accord with the idea that he himself entertains, that respect for the sovereign rights of the neutral must be guaranteed first of all.

[629] His Excellency Mr. Keiroku Tsudzuki remarks that the object of nearly all the articles of the project is to guarantee neutral rights. If Article 12, which contains one of the fundamental principles of neutral rights, were to be omitted, the Convention would contain no indication of neutral rights.

His Excellency Sir Ernest Satow asks that a vote be taken on the omission of the words "situated in the proximity of the theater of war" before the omission of Article 12 in its entirety is put to vote.

The President observes that the committee is not yet in a position to discuss the German proposal, as it must first be printed and distributed.

The committee has before it two proposals: one from the British delegation, calling for a vote on the omission of the words "situated in the proximity of the theater of war," and the other from the delegation of Germany, which wishes to maintain the distinction between ports situated in proximity to the theater of war and other ports.

Commander Burlamaqui de Moura gives the reasons for the vote which he will cast, stating that the laws of Brazil also make this distinction.

The President puts to vote Article 12, with the words "situated in the immediate proximity of the theater of war."

It is defeated by 7 votes to 4, with 3 abstentions.

Yeas: Germany, Brazil, France, and Russia.

Nays: United States of America, Spain, Great Britain, Italy, Japan, Netherlands, and Turkey.

Abstentions: Denmark, Norway, and Sweden.

Rear Admiral Siegel, seconded by his Excellency Mr. Tcharykow, then proposes that Article 12 be stricken out, which proposal is defeated by 10 votes to 2, with 2 abstentions.

Yeas: Germany and Russia.

Nays: United States of America, Brazil, Denmark, Spain, France, Great Britain, Italy, Japan, Sweden, and Turkey.

Abstentions: Norway and the Netherlands.

The President reads Article 13, worded as follows:

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports, or in its territorial waters (situated in immediate proximity to the theater of war), it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

He states that it would perhaps be unnecessary to vote on the words "situated in immediate proximity to the theater of war," in view of the vote that has just been cast on Article 12.

He therefore submits Article 13 to discussion without the above-mentioned words.

[630] His Excellency Hr. Hagerup proposes that the word "roadsteads" be inserted after the word "ports."

Article 13 with this addition is adopted.

The President passes to Article 14:

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports or waters, do not apply to war-ships devoted exclusively to scientific, religious, or charitable purposes.

His Excellency Mr. **Hammar skjöld** proposes that the words "*roadsteads or territorial waters*" be inserted after the word "port" in the first paragraph of this article.

The **President** remarks that the absence of these words is not accidental, but that they were left out in order to avoid imposing too great responsibilities upon neutrals.

His Excellency Mr. **Hagerup** recalls that he expressed the opinion that in principle the *duties* of neutrals should not be extended to territorial waters. But as it is here a question of a prohibition to a belligerent war-ship, he thinks it necessary to add the words proposed by his Excellency Mr. **HAMMARSKJÖLD**. He suggests, moreover, the insertion of the word "roadsteads" after the word "ports" in the second paragraph.

These proposals are adopted and Article 14 is then adopted with these modifications.

His Excellency Mr. **Tcharykow** states that the delegation of Russia makes reservations with respect to Articles 12 and 13 in their entirety.

Rear Admiral **Siegel** also makes reservations with regard to the same articles.

The **President** reads Article 15:¹

The neutral State must fix in advance the maximum number of war-ships belonging to a belligerent which may be in one of the ports of that State simultaneously. In the absence of such determination this number shall be three.

His Excellency Mr. **Tcharykow** recalls that on the first reading the committee approved the substitution of "may" for "must."

Mr. **Vedel** would insert "or roadsteads" after "ports" because the ships do not generally enter all ports. This addition meets with no objection.

The **Reporter** reads Article 15 as adopted on first reading:

If the neutral State has not fixed in advance the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that State simultaneously, this number shall be three.

His Excellency Mr. **Tcharykow** and Rear Admiral **Siegel** propose that the word "may" be substituted for the word "must" and that the number three, which is merely tentative and could not be imposed upon the world at large, be omitted.

His Excellency Sir **Ernest Satow** remarks that the reasons for this number having been selected is that most States have fixed upon a maximum number of foreign war-ships that may enter their ports and roadsteads in peace times. This maximum is precisely three each. It is not unreasonable therefore to maintain the same maximum in war times. This provision offers besides a guarantee against a concentration of belligerent war-ships in a neutral port, which would thus serve as a base for naval operations.

Rear Admiral **Siegel** remarks that certain States have not perhaps fixed the number for peace times. The neutral State must therefore be left free to determine this number for war times.

His Excellency Mr. **Hammar skjöld** observes that his recollection tallies exactly with Mr. **LOUIS RENAULT's** notes. It is important to the neutral and to his interest to regulate the matter; the hands of the neutral State are not tied,

¹ Annex 63.

since the article stipulates that in the absence of a special provision, and only in that case, the number three will be the rule.

The President puts Article 15 to vote, worded as above.

This article is adopted by 12 votes to 2.

Germany and Russia voted against it.

The President passes to Article 16:

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

Mr. Vedel proposes that the words "or roadsteads" be inserted after the word "port" in the third paragraph.

The article is adopted with this addition.

The President reads Article 17, which is worded as follows:

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

His Excellency Sir Ernest Satow asks why "territorial waters" are omitted from this article.

The President thinks that it would be difficult for vessels to make repairs in territorial waters and, besides, that it would not be possible for neutrals to control the repairs made under these conditions.

Article 17 is then adopted.

The President passes to Article 18:

Belligerent war-ships may not make use of neutral ports or roadsteads for replenishing or increasing their supplies of war material or their armament or for completing their crews.

[632] His Excellency Sir Ernest Satow proposes that the words "territorial waters" be inserted, and states that it is the second rule of Washington that compels him to request this addition. The use of territorial waters for a purpose prohibited in ports and roadsteads cannot be permitted.

The President puts Article 18 to vote, with the addition of the words, "territorial waters." It is adopted by 8 votes, with 6 abstentions.

Yeas: United States of America, Brazil, Spain, France, Great Britain, Italy, Japan, Turkey.

Abstentions: Germany, Denmark, Norway, Netherlands, Russia, and Sweden.

The President then reads Article 19, which is worded as follows¹:

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard; revictualing gives no right to an extension of the lawful length of stay.

¹ Annex 63.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country.

These vessels likewise may only ship fuel to bring up their load to the peace standard.

If in accordance with the law of the neutral State they are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

He observes that the committee again finds itself confronted with two systems: the "full bunker" system and the "nearest port in their own country" system.

His Excellency Mr. Keiroku Tsudzuki inquires whether a belligerent ship may prolong its stay in a neutral port as a result of permission granted it to take on fuel. On the PRESIDENT's replying in the negative, his Excellency Mr. KEIROKU TSUDZUKI proposes that the second part of the first paragraph, "re-victualing gives no, etc.," be transferred to the end of the second paragraph.

Rear Admiral Siegel proposes that the words "*leurs pleines soutes*" (to fill their bunkers) be substituted for the words "*leur plein normal*" (to bring up their load to the peace standard) in paragraph 2.

His Excellency Sir Ernest Satow desires to know whether the expression "*leurs pleines soutes*" (to fill their bunkers) includes reserve bunkers.

Rear Admiral Siegel replies that because of the various kinds of coal bunkers in the different navies, the formula suggested to him by Admiral ARAGO might be used: "Bunkers proper, excluding all other compartments not intended for such use."

His Excellency Mr. Tcharykow observes that there are two systems before the committee for calculating the quantity of coal necessary. From a practical point of view it is probable that the result would be approximately the same.

Besides, the conflicting proposals received practically equal support in the committee. We must recognize the fact that the general opinion of the Conference is that on no point are we to try for majorities, but for a common ground of agreement. It is in this spirit of conciliation, which has, for the [633] rest, prevailed in this committee, that the delegation of Russia proposes a formula consisting in combining the two systems in such a way as to leave every nation free to choose the one it prefers, the existence of this freedom of choice being mentioned in the present agreement. This formula might be worded as follows:

Similarly these vessels may only ship sufficient fuel to fill their bunkers proper. They may, however, ship sufficient coal to enable them to reach the nearest port in their own country in the ports of neutral States that prefer this method of fixing the quantity of fuel required.

His Excellency Sir Ernest Satow states that the British delegation's starting point is at bottom the very opposite principle: it is not the right of the neutral to give aid or assistance to the belligerent to enable him to go to meet his enemy. Therefore we must propose to you the adoption pure and simple of the English rule No. 17. The only reason for allowing a belligerent ship to take on coal in a neutral port is to prevent its becoming helpless on the high seas. It must be given sufficient coal for self-preservation, and that is the origin of the rule of the nearest port, a rule which has been accepted and put in practice by nearly all the nations which have enacted rules on this subject.

It is for these reasons that the British delegation prefers the wording of paragraph 2 of Article 19 which recognizes this principle.

Rear Admiral Siegel makes the following observations on the two principles that are before the committee in the matter of coal:

We find ourselves confronted with two systems concerning the quantity of coal that neutrals may allow belligerent war-ships to load in their ports, and before you make your choice I ask you to be good enough to permit me to point out in a few words the differences between these two systems and their significance to neutrals.

What neutrals desire, what they need, is to know as precisely as possible the quantity of coal that they may give to a belligerent vessel in their ports without being obliged to undertake an inquisitorial search or to meddle in the vessel's business that does not concern them. They would like to have a simple rule, easy to apply, that will admit of complying with the requests made by the vessel, while avoiding claims and disputes.

Let us examine the two systems closely and see in what way they meet these conditions.

If we accepted the first rule, which says that we may not allow the belligerent vessel more coal than it needs to enable it to reach the nearest port of its own country, a series of questions arise for the neutral to decide which place him in a very embarrassing position.

It will perhaps be possible to determine what is the nearest port and to calculate the distance; but then up comes the question of the radius of action and the speed at which the vessel is to make its voyage. It may be admitted that it is to proceed at the most economical rate of speed. But this may vary according to the quality of the coal, the condition of the boilers and of the machinery, the condition of the hull, the skill and experience of the officers and crew, etc. And again, this speed is possible only under favorable conditions. If the vessel encounters rough weather, if it is obliged to force its way against wind and sea, all calculations are thrown out and the vessel runs the risk of dangers of all kinds. How then would it be possible to determine the quantity necessary for the voyage? It might be said that the commander will give all information that may serve as a basis for estimating the quantity of coal. But even he cannot foresee what kind of weather he will meet with at sea; and it cannot be [634] required of him to put his ship in jeopardy by asking for an insufficient quantity of coal. The commander will therefore ask for the greatest possible quantity, and there will always be the risk of a dispute between the commander and the authorities of the neutral State likely to give rise to claims later on.

Furthermore, in case the nearest port should be so remote as to render it impossible for the vessel to reach it without replenishing its coal supply, it would still be necessary to give the vessel the greatest possible supply of coal. Finally, we must consider the case of the nearest port's being blockaded, which would modify all the conditions of the calculation.

In brief, the quantity of coal to be allowed would vary according to the case, and the neutral would always be obliged to assume the responsibility of determining the number of tons of fuel that the vessel should receive.

It would be a very different question and much easier to settle, if it were the general rule that the neutral may give as much coal as is necessary to fill the bunkers proper. In this case the neutral would receive from the commander

a certain figure, indicating the quantity of coal that he lacked. The neutral State would be in a position to see that this quantity is not exceeded, for it is not difficult to ascertain whether the bunkers are full. The delivery of coal would then cease, and any controversy or claim would thus be avoided.

The technical delegates of fifteen countries discussed this question for two hours and at the end of this discussion a majority of 10 votes to 5 favored the provision stating that the neutral State might give sufficient coal to fill the bunkers, because this is the most convenient measure and the best practical means of avoiding misunderstandings.

Against the adoption of this proposal it was urged that the belligerent would find this an easy way to procure coal to enable him to keep to the high seas and undertake hostile acts for a fairly long time, especially if he should be in the vicinity of a certain number of neutral States.

But such a situation exists in only a few quarters of the world. In vast regions of the globe ports where it is possible to obtain coal are quite far from one another. Moreover, the same state of affairs would likewise occur in case the rule of the nearest port of its own country should be accepted. All neutral States whose ports are very remote from the nearest port of the belligerent would be obliged to furnish not only sufficient coal to fill the bunkers, but the greatest quantity of coal necessary to enable the vessel to go as far as possible.

A final consideration is that the neutral is master in his own house and can forbid any belligerent vessel that attempts to use his ports as a base of operations to enter those ports. For the rest, it is not the neutral's duty to prejudice the intentions of a belligerent vessel belonging to a nation with which he is at peace that visits his port for the first time. It is sufficient if he treats the two belligerents the same.

Such, gentlemen, are the reasons which have decided us to propose that you accept paragraph 2 of Article 10 in the following form:

Similarly these vessels may only ship sufficient fuel to fill their bunkers proper.

The **President** remarks that, since the discussion on these two opposite schools appears to be completed, the intermediate proposal of the delegation of Russia should, in his opinion, be examined.

His Excellency Mr. **Tcharykow** again explains the purport of his proposal, which aims to *state* in this Convention that each State may choose that one of the two rules which it prefers.

[635] His Excellency Mr. **Keiroku Tsudzuki** states that he would prefer to have omitted from Article 19 all prescriptions concerning coal rather than to have the article contain a provision that would be equivalent to recognizing neutral ports as centers where belligerents might replenish their coal supplies.

His Excellency Mr. **Hagerup** would like the scope of the English proposal made clear to him. Is not the quantity of coal necessary to enable the vessel to reach its nearest port based upon an estimate to be made for the neutral? Must the latter assure himself of the belligerent vessel's destination?

His Excellency Sir **Ernest Satow** replies that the rule of the nearest port is laid down for the purpose of determining the quantity of coal to be allowed. It constitutes a simple method of calculation and does not impose upon the neutral any obligation to look into the destination of the vessel requesting the fuel. In so far as the compromise proposal of the delegation of Russia is

concerned, Sir ERNEST SATOW states that he will support it on two conditions: (1) if the older rule, that of the nearest port, is placed at the beginning of paragraph 2; (2) if the Russian proposal receives a unanimous vote in the committee.

His Excellency Mr. TCHARYKOW has no objections to having the British rule placed at the beginning of the paragraph. His proposal will therefore read as follows:

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry coal, when in the ports of neutral States which prefer this method of determining the quantity of fuel required.

His Excellency Mr. Keiroku Tsudzuki prefers the omission of Article 19 in its entirety to his Excellency Mr. TCHARYKOW's proposal.

The motion to omit the article is put to vote and defeated by 10 votes to 4.

The President states that the first paragraph of Article 19 has met with no opposition. He therefore declares it adopted.

He then puts to vote the wording proposed by his Excellency Mr. TCHARYKOW, which is carried by 11 yeas with 3 abstentions.

Great Britain, Japan, and the United States of America abstained from voting.

The last paragraph of Article 19 is then adopted. The Reporter states that the second sentence of paragraph 1 might better be placed at the end of paragraph 3.

His Excellency Mr. TCHARYKOW and Rear Admiral Siegel make reservations with regard to the last paragraph of Article 19 because of the words "permissible duration of their stay" therein, which imply recognition of the 24-hour rule.

The President passes to Article 20, which he reads:¹

Belligerent war-ships which have shipped fuel in a port belonging to a neutral State may not within the succeeding . . . months replenish their supply in a port of the same State less than . . . miles distant.

He remarks that two blank spaces have been left in this article, the preceding discussions of the committee not having reached any definite result.

His Excellency Sir ERNEST SATOW, because of the changes that have been made in Article 19, proposes that the number of months be fixed at three and that the article end with the words "same State."

[636] Rear Admiral Siegel feels that he must call attention to the fact that the committee of examination has already adopted the distance of 1,000 miles, but he raises no objection to a new discussion on this distance.

The President puts Article 20 to vote, as modified by the English proposal and reading as follows:

Belligerent war-ships which have shipped fuel in a port belonging to a neutral State may not within the succeeding three months replenish their supply in a port of the same State.

The vote results as follows: 5 yeas, 3 nays, 6 abstentions.

Yeas: United States of America, Spain, Great Britain, Italy, and Japan.

¹ Annex 63.

Nays: Germany, Brazil, and France.

Abstentions: Denmark, Norway, Netherlands, Russia, Sweden, and Turkey.

His Excellency Sir **Ernest Satow** proposes that there be inserted after Article 20, which has just been voted, the provision contained in Article 16 of the British project, whose text is as follows:

A neutral Power must not knowingly permit a war-ship of a belligerent lying within its jurisdiction to take on board supplies, food, or fuel in order to go to meet the enemy or in order to enter upon operations of war.

Although he has no hope of its being adopted, his Excellency Sir **ERNEST SATOW** would like to have this article put to vote.

The **President**, in compliance with this request, puts the article in question to vote without discussion. It is defeated by 8 nays to 3 yeas, with 3 abstentions.

Yeas: Spain, Great Britain, and Japan.

Nays: Germany, United States of America, Denmark, France, Norway, Netherlands, Russia, and Sweden.

Abstentions: Brazil, Italy, and Turkey.

The **President** passes to Article 21:¹

A prize may only be brought into a neutral port on account of unseaworthiness or stress of weather.

It must leave as soon as the circumstances which justify its entry are at end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

He adds that it has been proposed by the German delegation that the words "want of provisions or fuel" be added to paragraph 1.

[637] This addition is accepted by his Excellency Sir **Ernest Satow** and supported by his Excellency Mr. **Tcharykow**, who remarks that there is an absolutely humanitarian reason for allowing a vessel to enter a neutral port under these conditions. He therefore warmly supports the German proposal.

The **President** states that the first paragraph of Article 21, with the addition above mentioned, is adopted.

The second paragraph of the same article as it stands at present is likewise adopted.

The **President** then reads Article 22:

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

His Excellency Mr. **Hagerup** proposes that the words "*must employ the means at its disposal*" be substituted for the words "*must, similarly.*"

The **President** reads Article 22, which is adopted as thus modified.

He then passes to Article 23:

The neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court.

¹ Annex 63.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

The President recalls that this article gave rise to long discussions in the joint meeting of the committees of examination of the Third and Fourth Commissions. He thinks that it is perhaps unnecessary to go over it again.

The Reporter states that there is a slight modification, suggested by Mr. DE BEAUFORT, to be made in this article. With a view to preventing the overcrowding that might result in a small port, the neutral State should have the right to remove the prize to another of its ports.

Mr. de Beaufort explains that his proposal has in mind principally colonial ports.

The said proposal will be taken into account in the text.

The President adds that another amendment to this article has been proposed, to cover the case of a neutral prize that is brought into a port of its own country. It is perfectly evident that such a prize would become free of right.

The wording of the two amendments is left to the reporter, who will submit them to the Commission.

His Excellency Mr. Tcharykow notes that the discussion on Article 23 is still open. In view of the difficulties which the article presents, the delegation of Russia would not object to its omission.

The President passes to Article 24, whose text is as follows:

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port within the time fixed, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

[638] When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained, unless the Government of the other belligerent party consents to their repatriation.

The officers and crew of a belligerent ship detained by a neutral Power may be left in the ship or kept either on another vessel or on land, and they may be subjected to the measures of restriction which it may appear necessary to impose upon them.

The Reporter remarks that in the first paragraph of the article in question no provision has been made for the case of a vessel that enters a port unlawfully. His Excellency Mr. HAMMARSKJÖLD has called attention to this oversight. We must also provide for the case of a vessel's leaving before the expiration of the 24-hour interval. These observations could be taken into account in the final text.

Rear Admiral Siegel requests that it be stated in the report that there were differences of opinion concerning the treatment of the crews. He clings to his opinion, already set forth, that it would be preferable to leave the crew on board the vessel unless there are special reasons for removing them. In any event a certain proportion of the crew should remain on board to tend the engines, etc., of the detained vessel.

The President says that an amendment has been presented by the delegation of Italy with this in view. He reads it: "A sufficient number of men for looking after the vessel must, however, be always left on board."

His Excellency Mr. Tcharykow seconds the amendment presented by

Count **TORNIELLI** and the *vœu* submitted by Admiral **SIEGEL**. The keeping of men on board is a guaranty to the neutral, relieving him of any responsibility for the deterioration of the interned vessel.

His Excellency Sir **Ernest Satow** inquires whether there is a similar provision in the regulations concerning war on land.

The **President** and the **Reporter** observe that the situation is entirely different in land warfare, in which arms, munitions, etc., are less valuable than ships, which may easily deteriorate from lack of care and even become wholly unfit for use. Moreover, if no provision on the subject were formulated and neutrals were left free, their responsibilities would be increased.

His Excellency Sir **Ernest Satow** is of the opinion that it would be better not to dictate the course the neutral State must follow with respect to the vessel.

The **President** then puts to vote the Italian amendment, which is adopted by 11 yeas to 2 nays, with 1 abstention.

The result of the vote is as follows:

Yeas: Germany, United States of America, Brazil, Denmark, Spain, France, Italy, Netherlands, Russia, Sweden, and Turkey.

Nays: Great Britain and Japan.

Abstentions: Norway.

Rear Admiral **Siegel** inquires as to the import of the word, "unlawfully" (*illicitemment*), appearing in the Swedish proposal.

[639] His Excellency Mr. **Hammar skjöld** explains that this word refers to the case of vessels entering a port in violation of a prohibition or prescription enacted by the neutral State. It is of course understood that if a belligerent vessel enters a neutral port in violation of a rule of which it is unaware, it will not be interned for so doing. The vessel must have refused to leave, in spite of notification by the neutral authorities.

With reference to paragraph 2 of Article 24, his Excellency Mr. **Tcharykow** asks what the status of the crew of a belligerent ship interned in a neutral port will be. Will these seamen be prisoners of war of the belligerent, or are they in the power of the neutral State? If the neutral is obliged to take charge of them, in case he desires them set free and the other belligerent does not consent thereto, would not this be a restriction on the sovereignty of the neutral State?

The **President** recalls that the case is similar to that of troops interned in neutral territory.

To meet the observations presented with regard to this paragraph, it is agreed, after an exchange of views by his Excellency Sir **Ernest Satow**, his Excellency Mr. **Keiroku Tsudzuki**, his Excellency Mr. **Tcharykow**, the **President**, and the **Reporter**, that the final wording must be correlated with the corresponding formula of the regulations governing war on land.

The **President** passes to Article 25, which he reads:¹

A neutral Government is bound to exercise all necessary diligence in its own ports and waters, and with regard to every person within its jurisdiction, to prevent any violation of the above-mentioned obligations and duties.

The **Reporter** says that there is an amendment to this article, presented by the delegations of Belgium and of the Netherlands. This amendment modifies Article 25 as follows:

¹ Annex 63.

A neutral Government is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the above-mentioned obligations and duties in its ports and waters.

Article 25 is adopted in this revised form.

His Excellency Sir **Ernest Satow**, however, states that he reserves his vote on this text, which he desires to study.

The President passes to Article 26:

If it deems it necessary in order better to safeguard its neutrality a neutral State is free to maintain or establish stricter provisions than those which are laid down by the present Convention.

He recalls that this article was not adopted on the first reading. He asks whether the delegation of Japan insists upon retaining Article 26. Inasmuch as the principle contained in this article appears in paragraph 6 of the preamble, it is perhaps not absolutely necessary to retain the article.

His Excellency Mr. **Keiroku Tsudzuki** observes that, in his opinion, the provisions of the preamble refer only to the case of a neutral State's changing the rules contained in the present Convention, while Article 26 covers the case of a neutral State's enacting a stricter law outside of the Convention. It is therefore necessary to preserve this article, so that the neutral State may be left free to establish stricter rules outside of this international act. The conditions stipulated by the Convention are, in effect, the maximum that belligerents may demand of neutrals.

[640] His Excellency Mr. **KEIROKU TSUDZUKI** will nevertheless agree to the withdrawal of this article, in view of the opposition thereto, but with the reservation that Japan will always consider that it has the right to interpret it as has been stated.

The President passes to Article 27:

The exercise by a neutral State of the rights laid down in this agreement within the limits there indicated can under no circumstances be considered by one or other belligerent as an unfriendly act.

His Excellency Sir **Ernest Satow** says that he does not understand the necessity for this article and would therefore like to have it omitted. It seems to him, moreover, that the word "unfriendly" at the end of a Convention of this kind is not calculated to produce a good impression.

His Excellency Mr. **Tcharykow** points out that the draft Convention now under consideration is a body of provisions that are brand new. Those who sign this Convention will be very anxious to be protected from any claim. It is to the common interest of the great majority of States here represented that an article to this effect be included in the Convention. With a view to removing all opposition to the word "unfriendly," the delegation of Russia states that it intends to propose a final article ending with the words "contracting Powers"

Rear Admiral **Siegel** remarks that if a Power does not sign all the articles of the Convention, it is evidently bound only by those which it has signed. The benefit of the provision in Article 27 therefore applies only to the articles signed.

His Excellency Mr. **Keiroku Tsudzuki** supports the opinion expressed by his Excellency Sir **Ernest Satow** and points out the fact that a provision like that contained in Article 27 goes without saying. It seems to him that its insertion

in the Convention runs directly counter to the purpose intended, and he therefore expresses the opinion that it would be better to leave this article out.

The **President**, on his side, expresses the opinion that this article does not appear to be absolutely indispensable; there would consequently be no objection to omitting it. He asks whether the committee should proceed to a vote.

His Excellency Sir **Ernest Satow** repeats the arguments that he has already urged against Article 27 and adds that if this article is put to vote, he will propose an amendment thereto, which he reads:

The exercise by a neutral State of the rights laid down in each of these articles can under no circumstances be considered by one or other belligerent as an unfriendly act.

His Excellency Mr. **Tcharykow** states that he concurs entirely in this amendment.

It is agreed that the final drafting of this amendment will be left to the reporter.

His Excellency Mr. **Tcharykow** takes the floor and proposes an Article 28. He points out the fact that the Convention which the committee has just finished examining refers to a certain number of laws and ordinances, some of which are already in existence, while others have still to be enacted.

The Convention implies that these divers laws must be known to all the interested States. Would it not be well therefore to insert in the Convention [641] an article that would facilitate communication to one another by the various States of the laws in question? To this end the delegation of Russia would propose the following article:

The high contracting parties shall communicate to each other in due course all laws, proclamations, and other enactments regulating, in their respective countries, the status of belligerent ships in their ports and waters, by means of a communication in writing addressed to the Netherland Government and forwarded immediately by that Government to the other contracting Powers.

The **President** supports this proposal, which he considers an important and necessary addition to the Convention which the committee has just elaborated.

There being no opposition to the final article proposed by the delegation of Russia, it is declared adopted.

His Excellency Sir **Ernest Satow** asks what the result of the vote on Article 23 was.

The **President** informs him that the article was adopted.

His Excellency Sir **Ernest Satow** states that the British delegation cannot accept it.

His Excellency Mr. **Tcharykow** feels called upon at the close of the discussion to present the following considerations to the committee:

Thanks to the spirit of conciliation which has not ceased to prevail among us, we have been able to reach and to state an agreement upon the majority of the questions which we have had under discussion. One question only remains unsettled, and it is of capital importance: the question of the vessel's stay in port.

When the vote was cast on this question, we heard two great Powers raise the same objections to the proposed reading and state that they could not and

must not accept the 24-hour rule. We have already said, and we repeat, that there can be no question in this Conference of forcing the will of the majority upon the minority. On the contrary, we must try to find a ground of conciliation with respect to every question. It is in this spirit that the delegation of Russia would like to suggest, in case the proposal concerning the theater of war should not be favorably received, a new wording which appears to it calculated to satisfy the interests of all.

We have discussed the quantity of coal; but whatever that quantity may be, we must allow those concerned time enough to load it. Otherwise this provision would be a snare and a source of misunderstandings. We have all recognized that a ship has the right to preserve its existence at sea and that it is not one of the functions of a neutral State to reduce a belligerent ship to the condition of a derelict.

Article 12 might therefore be worded as follows:

In the absence of contrary provisions of the neutral State, belligerent war-ships are not permitted to remain in the ports, roadsteads or territorial waters of the said State longer than the time necessary to complete the supplies indicated in Article 19 of the present Convention.

We do not, however, propose that this formula be discussed; we merely submit it for the committee of examination to think over. It goes without saying that, if this article is accepted, the words "within twenty-four hours or within the time prescribed by local regulations" in Article 13 would be replaced by the following: "within the time provided by Article 12."

The President, after stating that the committee will be called later on to hear the report, declares the meeting adjourned.

[642]

MEETING OF COMMITTEE OF EXAMINATION OF THE SECOND SUBCOMMISSION OF THE THIRD COMMISSION

SEPTEMBER 28, 1907

His Excellency Count Tornielli presiding.

The meeting opens at 10 o'clock.

The **President** addresses the committee as follows:

As you know, our eminent reporter, moved by personal scruples which his great authority and experience do not seem to me to justify, desired that the report which he has drawn up on the work of our committee, to be submitted first to our full Commission and then to the whole Conference, be laid before you.

I have therefore departed from the procedure which has usually been followed in our Commission and, instead of calling at once a meeting of the Commission to begin the discussion of the text which the report accompanies, I have requested you to meet once more as a committee of examination and drafting committee.

At our meetings of September 11 and 12 we took up the second reading of our draft Convention. Minutes were kept of these meetings. You received copies of these minutes several days ago. I would ask you therefore whether you have any comments to make on them.

There being no comments, I consider these minutes adopted.

Our order of business comprises the reading and approval of the report,¹ which has been prepared in the name of the committee by Mr. LOUIS RENAULT.

In the draft Convention to which the report refers the final changes that were introduced in the course of the second reading have been taken into account. The majority of these modifications concern the form merely, but some of them affect the substance of provisions which do not appear to have received as yet the stamp of completeness and finality.

[643] It is hardly necessary for me to say that it is still permissible for any of us to make further proposals and to submit amendments which may improve the text or facilitate its unanimous adoption by the States represented at the Conference.

We are therefore about to take up a final reading, so to speak, with the aid of the explanations and elucidations² furnished by the report.

The well-ordered arrangement of this document counsels us not to deviate therefrom in this final examination.

¹ See report to the Commission, annexed to the minutes of the eighth meeting of the Third Commission, *ante*, p. 489 [486]; see also report to the Conference, vol. i, p. 288 [295].

In two masterly pages, which you have had the pleasure of reading, the reasons for the work which has been assigned to us are set forth first of all. The great importance and significance of this work of international codification, toward whose success we all have the right to be proud to have collaborated, are made clear to us.

Then follows the commentary on the articles.

If you consider it proper, I shall read each article and we shall then refer to the statement of reasons contained in the report only if this is shown to be necessary by the remarks and observations which you may be pleased to make. Does our reporter deem it advisable to read to us certain portions of his report concerning points which have not yet been finally approved and might give rise to further debate? He will decide this for himself.

His Excellency Sir **Ernest Satow** makes the following remarks:

In the draft as presented to the committee we see the first serious attempt that has been made up to the present time to gather together in an international code the rules which neutrals should observe with respect to belligerents in time of naval warfare, and it is precisely in that fact that the value and interest of the present proposal lie.

However, if the draft is compared with the original proposal made by the British delegation, we perceive that in several important respects it departs from the principles which Great Britain has applied in the past as a neutral and which, in the absence of a convention, she will expect to see applied toward her and her enemy by the other nations in time of war.

We recognize the necessity of making mutual concessions if it is desired to reconcile divergent practices in a uniform code. A Government must therefore be willing to modify its established custom, in order to bring about the unanimity desired, and the Government of his Britannic Majesty will not fail, if the Convention is adopted just as it is, to examine it carefully to see whether it can accept it and whether it is desirable to this end to amend the British regulations on neutrality.

We must not lose sight of the fact that all the regulations regarding this matter have their source in the desire to protect neutrals. It is certain that a neutral who did not prevent a belligerent from making an unlawful use of his ports and territorial waters would draw upon himself remonstrances from the other belligerent by this very fact, and it is precisely to prevent disputes of this nature that the nations have been obliged to forbid certain acts and to enact regulations in the matter of neutrality. Is the present draft calculated to prevent disputes between neutrals and belligerents? That is what we should ask ourselves, and according as the answer is in the affirmative or negative the draft should be adopted or rejected.

I need not point out that the question is of the greatest importance to Great Britain in view of the extent of her coast-line and the frequent use that belligerents will not fail to make of her ports in future.

[644] We therefore find ourselves compelled to reserve to our Government the right to study the entire project after the adjournment of the Conference. Only on this condition can we discuss and vote upon each article separately. If the draft should undergo radical modification, we do not believe that our Government could accept it, and it would consequently be useless to reserve to it the right of examination which we have just mentioned.

The President states that in view of the importance of his Excellency Sir

ERNEST SATOW's declaration, it will be inserted in full in the minutes of the meeting.

The **PRESIDENT** then reads Articles 1 and 2¹ of the draft, which call forth no observations, and then passes to Article 3.

The **Reporter** proposes an amended wording for the second paragraph. He suggests the following: "If the prize is not in the jurisdiction of the neutral State, on the demand of that State made through the diplomatic channel the captor Government must liberate the prize."

The **President** recalls that the second paragraph in question was introduced at the request of Rear Admiral SIEGEL to harmonize it with the Convention relative to the Prize Court. The wording that was then adopted might appear obscure to those who are not aware of its origin. For this reason the new version seems to him preferable.

His Excellency Sir **Ernest Satow** is of the opinion that this modification is very important. The delegation of Great Britain has always maintained the principle of the neutral's duty to address the captor Government with a view to obtaining the release of the prize. The committee of examination substituted the word "may" for the word "must." A new wording is now proposed, and the British delegation finds it necessary to reserve its opinion on the matter.

The **Reporter** thinks that the new wording is more in accord with the ideas expressed by the British delegation. This wording appears to him to state more precisely the obligation of the neutral State to address the captor Government in order to obtain the release of the prize. The neutral State will therefore have the alternative either of communicating through the diplomatic channel or of appealing first to the national courts and then to the Prize Court. It would perhaps be better to omit the expression "through the diplomatic channel," in order not to lay stress on the necessity of resorting to this method, which is not absolute.

His Excellency Sir **Ernest Satow** says that he explained the point of view of the British delegation at the last meeting. So as not to obstruct the discussion, he will therefore content himself with reserving his opinion.

After summing up this debate, the **President** requests the reporter to be good enough to take the views that have just been exchanged into account in his report.

The **PRESIDENT** then reads Article 4, which gives rise to no comments.

With regard to Article 5 the **Reporter** recalls that he has stricken out of the draft Convention, to be found at the end of his report, the word "other," between the words "any" and "apparatus."

This slight modification is approved by the committee.

The **President** reads Article 5 *bis*.

[645] The **Reporter** explains in this connection that he has not changed the numbers of the articles in the draft, thinking that the article in question might perhaps not be retained, in view of the vote cast at the last meeting of the committee.

His Excellency Sir **Ernest Satow** states that he does not insist upon the retention of Article 5 *bis*. Nevertheless he requests Mr. LOUIS RENAULT to be good enough to insert in his report the entire discussion with regard to this article, as well as the result of the votes upon it.

Their Excellencies Messrs. **Tcharykow** and **Keiroku Tsudzuki** join in his Excellency Sir **ERNEST SATOW**'s request that the discussion and votes on this article be reproduced in the report.

The **President** states that, since the delegation of Great Britain no longer insists upon the retention of Article 5 *bis*, that article may be left out of the final draft. He requests the reporter to be good enough to comply with the wish expressed by their Excellencies Sir **ERNEST SATOW**, Mr. **TCHARYKOW** and Mr. **KEIROKU TSUDZUKI**.

The **PRESIDENT** then reads Articles 6 and 7,¹ which give rise to no objections.

With regard to Article 8¹ and as a result of observations made by his Excellency Mr. **KEIROKU TSUDZUKI**, the **Reporter** asks whether the committee authorizes him to substitute the word "Power" wherever "State" or "Government" appears in the draft.

It is decided that this be done.

The committee passes to Article 9.

His Excellency Mr. **Keiroku Tsudzuki** states that the Japanese Government cannot make any agreement with regard to the straits between the many islands or islets which the Japanese Empire comprises, these straits being integral parts of the Empire.

Mr. **de Beaufort** remarks that there is a slight difference between the second paragraph of Article 9 appearing in the report and the same paragraph of the same article as it appears in the draft. In the draft no mention is made of roadsteads and territorial waters.

After an exchange of views by the **President**, Mr. **de Beaufort**, his Excellency, Mr. **Hagerup**, his Excellency Sir **Ernest Satow**, and the **Reporter**, the committee decides that the words "roadsteads and territorial waters" should be inserted in the final draft.

Articles 10 and 11 are then read and call forth no observations.

The **President** passes to Article 12 of the draft.

His Excellency Mr. **Tcharykow** recalls that he presented at the last meeting of the committee, in the name of the delegation of Russia, a proposal in which the delegation of Germany had joined and which has been examined by the committee. He would like to make a subsidiary proposal in the same spirit of conciliation.

The **President** reads this proposal, which is worded as follows:

ARTICLE 12

In the absence of contrary provisions of the neutral State, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State beyond the time necessary to complete the [646] supplies indicated in Article 19 below. However, the said vessels may always stay twenty-four hours without its being necessary that their stay be based on any special reason.

His Excellency Mr. **Tcharykow** points out the fact that this text consists of two distinct parts.

In the first paragraph it was desired to emphasize the principle of the sovereignty of the neutral State, its full and entire liberty to lay down its rules of neutrality and also to state that, if a belligerent vessel is permitted to ship fuel in the waters of the neutral, it is naturally necessary to allow it sufficient

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time in which to load. Need we add that as a matter of fact in no country would a vessel be compelled to leave before it had finished loading the fuel which had been allowed it?

The second portion of the proposal aims to keep the neutral State out of every kind of difficulty in the matter of the application of the 24-hour rule. It follows, in effect, from the proposed provision that the 24-hour stay will always be permitted without the neutral Power being required to make an investigation; although it is always free to do so if it deems it necessary. This provision might, however, be made more precise.

His Excellency Mr. TCHARYKOW states that the proposal submitted by him to the committee is made merely with a view to conciliation. He desires to lay particular stress on this point because of the important declaration made at the beginning of the meeting by his Excellency Sir ERNEST SATOW. The latter stated, in effect, that the principal point of view assumed by the British delegation in passing judgment upon the draft was the need of removing to the greatest possible extent all chance of dispute between belligerents and neutral Powers.

His Excellency Mr. TCHARYKOW thinks that the formula which he had the honor of proposing would constitute considerable progress in this direction.

His Excellency Mr. Keiroku Tsudzuki, while recognizing the conciliatory spirit in which the proposal of the delegation of Russia is made, expresses regret that he cannot join in it. The delegation of Japan is compelled to favor the present wording of Article 12. We must not forget, indeed, that this text is in itself a compromise provision, which is the extreme limit of the concessions which the Japanese delegation is able to make in this matter. He thinks that acceptance of the new Russian proposal would be equivalent to recognizing the legality of the doctrine that war-ships have the right to use a neutral port as a supply station. It is a long step from the use of neutral ports as places of refuge and the use of such ports by belligerents as strategic supply stations. No one disputes the fact that coal possesses a great strategic value, and it is contrary to the modern tendency of the doctrine of international law to permit the use of neutral ports for strategic purposes. It is for these reasons that his Excellency Mr. TSUDZUKI considers Article 12 of the draft the extreme limit of compromise.

His Excellency Sir ERNEST SATOW, while recognizing the conciliatory spirit of the Russian proposal, does not think that the British delegation can concur in it. This proposal has, in his opinion, the serious drawback of appearing to abolish the 24-hour rule. As a matter of fact the proposal contained in the first part of the Russian project does not seem to Sir ERNEST SATOW to be very necessary. To his own knowledge it is easy in nearly all the ports of the world to load a vessel with coal in six or seven hours. It is for this practical [647] reason that the British Government has adopted the 24-hour rule, which gives the vessel all the time that is needed to take on supplies.

His Excellency Mr. HAMMARSKJÖLD states that, while he prefers the present text, he would join in the Russian proposal, if it were calculated to facilitate a positive solution. This proposal would perhaps appear more acceptable if the two parts of the provision were reversed, so as to bring out the fact that the 24-hour rule is the principle and that a longer stay is merely an exception thereto. To this end, his Excellency Mr. HAMMARSKJÖLD would propose that the following amendment be substituted for the Russian amendment:

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent vessels are not permitted to remain, except in the cases covered by the present Convention, in the ports of the said Power more than twenty-four hours or more than such further time as may be necessary to complete the supplies indicated in Article 19 below.

The **President** reads the proposal of the delegation of Sweden and asks the committee to make known its opinion with regard to it.

Rear Admiral **Sperry** states that he concurs in the text presented by his Excellency Mr. **HAMMARSKJÖLD**.

His Excellency Mr. **Tcharykow** desires to state that the spirit of conciliation manifested by the delegation of Russia would seem to be shared by the committee. In response to this desire for agreement, he states that he also accepts the text as modified by his Excellency Mr. **HAMMARSKJÖLD**.

His Excellency Mr. **Keiroku Tsudzuki** regrets that he cannot concur in a proposal which was evidently made in a spirit of conciliation, but which, to his mind, would be equivalent to recognizing that belligerent vessels have the right to take on supplies in a neutral port and to use such a port for strategic purposes. Besides it introduces an element of uncertainty into Article 12 which is calculated to affect the scope of the other articles. The adoption of this proposal would therefore have the effect of modifying the character of the Convention, whose essential purpose is to determine as clearly as possible the rights and duties of neutrals with respect to belligerents.

He repeats that Article 12 of the draft is the extreme limit of the concession that the Japanese delegation is able to make on this point.

His Excellency Sir **Ernest Satow** states that he reserves the right to declare himself later on with regard to the wording proposed by the delegate of Sweden.

His Excellency Mr. **Hagerup** desires to remark that the information which has just been given to the committee by his Excellency Sir **ERNEST SATOW** with respect to the average time required for the loading of coal in nearly all the ports of the world does not seem to apply to the ports of Norway. According to the information which he possesses twenty-four hours would in most cases be scarcely sufficient time for a vessel to complete its loading.

His Excellency Sir **Ernest Satow** remarks that he referred only to ports where there is at all times a supply of coal on hand and not to ports that might be used in time of war or on exceptional occasions.

The **President** asks whether the committee thinks that it should vote on

Article 12 of the draft or on Article 12 as modified by the Swedish proposal.

[648] His Excellency Sir **Ernest Satow** states that he will be obliged to vote against the Swedish proposal.

His Excellency Mr. **Hammar skjöld** states that, under these circumstances he deems it advisable to withdraw his proposal, reserving the right to bring it before the Commission if occasion should demand.

His Excellency Mr. **Tcharykow** states that he cannot accept Article 12 except as modified by the Swedish delegation, but as he notes that it is impossible to come to an agreement on this proposal, he feels that he must return to the Russian proposal, for he desires to find out the opinion of the committee regarding it

Rear Admiral **Siegel** recalls that he made a proposal intermediate between

the English 24-hour rule and the French rule which places no limit on the stay of a belligerent vessel. He reserves the right to take this proposal up again and to defend it before the Commission, and therefore he will abstain from voting if the committee proceeds to vote on Article 12.

His Excellency **Turkhan Pasha** is of the opinion that a vote is not necessary on the Russian proposal. The text can, in effect, be interpreted in different ways. Moreover, it does not appear to be necessary to ascertain by means of a vote the disagreement which appears to exist in the committee with regard to Article 12.

His Excellency **Mr. Keiroku Tsudzuki** joins in the opinion which has just been expressed by his Excellency the first delegate of Turkey.

His Excellency **Mr. Tcharykow** states that he withdraws his request for a vote. He reserves the right to bring up his proposal before the Commission.

After this exchange of views, it is decided that the reporter will keep Article 12 in the draft as presented to the committee. The report must mention the various proposals that have been made and the explanations that have been exchanged with regard to them.

His Excellency **Mr. Tcharykow** desires to call attention to the fact that the previous vote on Article 12 as submitted to the committee stood 7 yeas, 4 nays, with 4 abstentions. This article did not therefore receive an absolute majority.

The **President** reads Article 13 and recalls its connection with the preceding article

His Excellency **Mr. Tcharykow** states that because of this connection it is his intention to give Article 13 a new form which would be in keeping with the text that he has proposed for Article 12.

The **President** thinks that, as Article 12 is reserved, it will be sufficient to take account of this proposal, upon which the Commission will pass, in the minutes.

The **President** reads Article 14,¹ to which no objection is raised.

With regard to Article 15, which then comes up for discussion, his Excellency **Mr. Tcharykow** recalls that he must maintain the objections presented by the delegation of Russia to admitting three ships to a neutral port simultaneously. This number does not, in his opinion, correspond with the present organization of naval forces. In no navy does a vessel of the first class cruise by itself. [649] It is almost always accompanied by smaller fighting units. Under these circumstances, it would seem to him to be difficult to limit the number of vessels of a squadron which might come into a neutral port to three.

Therefore his Excellency **Mr. TCHARYKOW** would have liked to propose the adoption of a higher figure than three and the insertion of the words "except by special permission" in Article 15.

His Excellency **Sir Ernest Satow** could not agree to this new wording, as the suggestion of his Excellency **Mr. TCHARYKOW** seems to him to lead to consequences that would be dangerous to neutrals. He deems it prudent to keep the present text of Article 15.

Rear Admiral **Siegel** states that he joins in the observation presented by his Excellency **Mr. TCHARYKOW**. He recalls that, as previously stated, he is not in favor of limiting by an international provision the number of vessels to be admitted to neutral ports. This right must be left to the legislation of the several States.

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His Excellency Mr. **Hammar skjöld** recognizes that the insertion in Article 15 of the words "except by special permission" would be clearly dangerous to neutral countries; but, on the other hand, if the neutral State desires to reserve the right to grant this permission, it could be left free to do so. The first delegate of Sweden suggests therefore that the formula of Article 12 be adopted for Article 15: "*In the absence of provisions to the contrary.*"

His Excellency Mr. **Tcharykow** states that he accepts the modification suggested by his Excellency Mr. **HAMMARSKJÖLD**.

The President reads Article 15, which might therefore be modified to read as follows:

In the absence of provisions of the neutral State to the contrary, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that State simultaneously shall be three.

His Excellency Mr. **Keiroku Tsudzuki** wishes to state that there is a great difference between Article 15 of the draft and the Swedish proposal. The former stipulates, in effect, the duty of the neutral State to fix in advance the maximum number of vessels that may be admitted simultaneously to the same port, while the Swedish proposal passes over this obligation in silence.

His Excellency Sir **Ernest Satow** is of the same opinion. Article 15 of the draft seems to be clearer and more precise than the proposed new wording. As the latter appears to him to have the effect of lessening the duty of the neutral State, he will vote against the Swedish proposal.

His Excellency Mr. **Keiroku Tsudzuki** adds that the opinion which he has just expressed is also supported by the passage in the report where it is stated that the number three is a guaranty against the concentration of belligerent ships in a neutral port, which would thus serve as a base of operations.

A vote being requested on the Swedish proposal, the committee proceeds to cast it. The result is as follows: 9 yeas, 3 nays, with 2 abstentions.

Yeas: Germany, United States of Brazil, Denmark, France, Norway, Netherlands, Russia, Sweden, Turkey.

[650] *Nays:* Great Britain, Japan, Portugal.

Abstentions: United States of America and Italy.

Articles 16, 17 and 18¹ are then adopted without discussion.

The President reads Article 19.

His Excellency Sir **Ernest Satow** asks whether the word "revictual," which occurs in the first paragraph, includes only the revictualing of provisions, or whether coal is also included.

The Reporter says that there can be no doubt as to coal not being included in the term revictualing. The report will not fail to mention this interpretation.

His Excellency Mr. **Keiroku Tsudzuki** remarks that in the last paragraph of this article fuel is included in the word "revictualing."

The Reporter observes that the last paragraph was originally contained in the first, and that that is the reason for the imperfect wording of the article.

The President proposes that Mr. **LOUIS RENAULT** be entrusted with the task of rewording this text so as to avoid all ambiguity.

The President then passes to Article 20.

His Excellency Mr. **Tcharykow** recalls the discussion to which this article gave rise and which has been inserted in the report. The British prescriptions concerning neutrality have since come to his knowledge, and he thinks that he

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ought to cite an article of the British regulations which corresponds with the article in question. He proposes that this wording be adopted in its entirety, as it admits of inserting the words "*sauf permission spéciale*" (except by special permission), between the words "*approvisionnement*" (supply) and "*qu'après*."

His Excellency Sir **Ernest Satow** is flattered by the proposal that the British regulations in the matter of neutrality be adopted in part. If the same disposition were shown with regard to the regulations as a whole, he would concur in the proposed amendment; but in view of the present status of the question, he cannot accept this wording. With regard to Article 15, he has stated that he is opposed to the adoption of the special permission clause; if he should now declare himself in favor of this special permission clause, he would be inconsistent.

His Excellency Mr. **Keiroku Tsudzuki** is of the opinion that the right of granting special permission might prove very dangerous to neutrals.

His Excellency Mr. **Tcharykow** recalls that Great Britain and the United States of America have long followed this rule.

Rear Admiral **Sperry** remarks that this rule is a very old one and that conditions have changed since then.

Rear Admiral **Siegel** observes that, if the words "except by special permission" are not inserted, he will be obliged to make reservations with respect to the article in question.

The committee passes to a vote on Article 20, including the words "except by special permission." The vote results as follows: 4 yeas, 5 nays, 5 abstentions.

[651] *Yeas*: Germany, Brazil, France, and Russia.

Nays: United States of America, Great Britain, Italy, Japan, and Portugal.

Abstentions: Denmark, Norway, Netherlands, Sweden, and Turkey.

As the motion to insert the words "except by special permission" has been defeated, his Excellency Mr. **Tcharykow** and Rear Admiral **Siegel** make reservations with regard to Article 20 in its entirety.

The **Reporter** proposes that the committee take up again the limitation of the replenishment of supplies within a radius of 1,000 miles, as adopted in the technical subcommittee.

His Excellency Mr. **Tcharykow** states that Russia is ready to support any conciliatory proposal in this direction.

His Excellency Sir **Ernest Satow** states that he can accept only the present wording of the article.

The **President** passes to Articles 21 and 22,¹ which he reads. These articles give rise to no comments.

With regard to Article 23, Commander **Burlamaqui de Moura** asks for an explanation. This article mentions a prize court. Does this refer to a national court or to the International Court? As Brazil has voted against the project for this Court, she is compelled to reserve her vote on this article.

The **Reporter** explains that in the present instance a national prize court is referred to, and he adds that, if the delegation of Brazil votes for this article, the rights of its Government will not be impaired in any way.

His Excellency Mr. **Keiroku Tsudzuki** states that some uncertainty has

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been manifested with regard to this article, as appears from the votes cast at the joint meeting of the committees of the Third and Fourth Commissions.

His Excellency Mr. **Tcharykow** says that the delegation of Russia, in view of the divergent opinions that have been expressed, will not oppose the omission of Article 23.

His Excellency Mr. **Hammar skjöld** would like to have this article omitted, as it imposes a heavy responsibility upon neutrals without succeeding in abolishing the destruction of neutral prizes.

His Excellency Mr. **Tcharykow** proposes that the committee refrain from voting on this article, and that it be submitted to the Commission. It is decided to do so.

Rear Admiral **Sperry** announces that the delegation of the United States of America reserves its vote on this article.

Articles 24, 25, 26, and 27¹ are then read by the President, and call forth no comments.

[652] His Excellency Sir **Ernest Satow** asks that the committee go back to the passage in the report reading as follows:

The last part of Article 5 of the British proposal referred to the conversion by one of the belligerents of a merchant ship into a war-ship, which conversion the neutral State should prevent within its jurisdiction. The general question, being within the province of the Fourth Commission, was not considered in the Third. By reason of its connection with the questions here dealt with, if it had been settled, we might have considered inserting in the draft now before us a provision in harmony with the rules expressly laid down.

In his opinion, it is preferable to omit the last paragraph of Article 7 of the project. It is now too late to reopen the discussion on the question of the legality of the conversion of war-ships in neutral ports.

Moreover, the Fourth Commission, as well as the Third Commission, is competent to act on this question. We thought that it was generally accepted doctrine that such conversion is not permissible: otherwise we should have insisted upon having the question put to vote in the Third and Fourth Commissions. We shall, however, be satisfied with the omission of this portion of the report.

Nevertheless we maintain our point of view that a neutral State is failing in its duty if it permits a merchant ship to be converted into a war-ship in one of its ports.

The President remarks that the preamble still remains to be examined. As it has been discussed at length, he feels that it will give rise to no comments.

The committee shares this opinion, and the meeting adjourns at 12:30 o'clock.

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ANNEXES

[655]

BOMBARDMENT BY NAVAL FORCES OF UNDEFENDED PORTS, VILLAGES, ETC.

Annex 1

PROPOSAL OF THE DELEGATION OF THE UNITED STATES

The bombardment, by a naval force, of unfortified and undefended towns, villages, or buildings is forbidden, though such towns, villages, or buildings are liable to the damages incidental to the destruction of military or naval establishments, public depots of munitions of war, or vessels of war in port; and such towns, villages, or buildings are liable to bombardment when reasonable requisitions for provisions and supplies at the time essential to the naval force are withheld, in which case due notice of bombardment shall be given.

The bombardment of unfortified and undefended towns and places for the non-payment of ransom is forbidden.

Annex 2

PROPOSAL OF THE SPANISH DELEGATION

The Spanish delegation, while accepting the proposal of the delegation of the United States of America relative to the bombardment by a naval force of unfortified and undefended towns, as well as the addition proposed by the delegation of Russia for the application in case of bombardment of Article 27 [656] of the Regulations respecting the laws and customs of war on land, thinks that in order to avoid possible abuses it would be desirable to specify what are the requisitions that should be considered reasonable and a refusal of which would render towns liable to bombardment.

The Spanish delegation is of the opinion that these requisitions should be paid for at current prices and should be limited to the necessary provisions and supplies that might be rightfully requested in a neutral port.

Annex 3

PROPOSAL OF THE ITALIAN DELEGATION

The provisions of Articles 25 to 28 of the Regulations respecting the laws and customs of war on land of July 29, 1899, are applicable also to bombardment by naval forces.

However, bombardment by a naval force of undefended ports, towns, villages, dwellings or buildings is admissible, so far as necessary, for the purpose of destroying military or naval establishments, depots of munitions of war, or ships of war in the harbor.

Annex 4

PROPOSAL OF THE NETHERLAND DELEGATION

The bombardment by a naval force of unfortified and undefended ports, towns, and villages is prohibited.

These ports, towns, or villages are nevertheless liable to the unavoidable damage resulting from destruction of military or naval establishments, depots of munitions of war, or war-ships in a harbor.

They may even be bombarded when provisions or supplies for the reasonable immediate needs of the naval force, exceptionally requisitioned, are refused.

In these cases previous notice of bombardment will be given.

Bombardment for non-payment of a ransom or of a war contribution is prohibited.

When the commander of a naval force proceeds to the bombardment of a town or village he will take all necessary measures to spare, as far as possible, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick and wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such edifices or places by special signs, which shall be notified in advance to the commander of the naval force.

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Annex 5

PROPOSAL OF THE RUSSIAN DELEGATION

Include in the text of the agreement to be reached on the subject of bombardments of ports, towns, and villages by a naval force the following article:

In bombardments by a naval force of ports, towns, and villages the commander of the attacking naval forces shall take all necessary measures to spare, as far as possible, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.¹

¹ See Article 27 of the Convention respecting the laws and customs of war on land of July 29, 1899.

Annex 6**PROPOSAL OF THE DELEGATIONS OF THE UNITED STATES OF AMERICA, SPAIN, ITALY, NETHERLANDS, AND RUSSIA IN SUBSTITUTION OF THE PROPOSALS PREVIOUSLY PRESENTED BY THE SAME DELEGATIONS.****ARTICLE 1**

In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible historic monuments, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by special visible signs.

ARTICLE 2

The commander of the attacking naval force, before commencing the bombardment, shall do his utmost to warn the authorities.

ARTICLE 3

It is forbidden to give over to pillage even a town or place taken by storm.

ARTICLE 4

It is forbidden to bombard undefended ports, towns, villages, dwellings or buildings.

ARTICLE 5

When the necessities of the military operations require the destruction of military works, military or naval establishments, depots of arms or war *matériel*, workshops used for the needs of the hostile fleet or army, or ships of war [658] in the harbor, the commander of the naval force may himself proceed to said destruction by bombardment, if the local authorities, after a formal summons and after the expiration of a reasonable time of waiting, have refused to satisfy these requirements.

Under such circumstances ports, towns and villages, dwellings or buildings are liable to unavoidable damage resulting from bombardment.

ARTICLE 6

The bombardment of ports, towns, villages, dwellings or buildings is admissible after notice thereof has been given, when the furnishing of provisions or supplies necessary for the immediate needs of the force present, after formal summons given to the local authorities, is refused.

ARTICLE 7

The bombardment of undefended ports, towns, villages, dwellings or buildings for the non-payment of a money contribution is prohibited.

Annex 7

AMENDMENT OF THE FRENCH DELEGATION TO THE COMBINED
PROPOSITION ¹

Replace Article 5 by the following:

Military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor, are not included in this prohibition; these the commander of a naval force may destroy with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

If for imperative military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the preceding case, and then the commander shall take all due measures in order that the town may suffer as little harm as possible.

Annex 8

DRAFT REGULATIONS

CHAPTER I.—*The bombardment of undefended ports, towns, villages, etc.*

ARTICLE 1

It is forbidden to bombard by naval forces undefended ports, towns, villages, dwellings or buildings.

A place cannot be bombarded for the sole reason that automatic submarine contact mines are anchored in front of it.

[659]

ARTICLE 2

However, when the requirements of military operations demand the destruction of military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, or of war vessels in the harbor, the commander of the naval force may destroy with artillery, if all other means are impossible and if the local authorities have, after formal summons and the expiration of a reasonable time of waiting, refused to satisfy these demands.

Under such circumstances the ports, towns and villages, dwellings or buildings, are liable for the unavoidable damage resulting from the bombardment.

ARTICLE 3

After notice has been given, the bombardment of ports, towns, villages, dwellings or buildings is permitted when the furnishing of provisions or supplies

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necessary for the immediate use of the naval force present, is, after a formal summons to the local authorities, refused.

The provisions contained in Article 52 of the Regulations concerning the laws and customs of war on land have an analogous application with respect to the requisitions mentioned in paragraph 1.

ARTICLE 4

The bombardment of undefended ports, towns, villages, dwellings or buildings for non-payment of a money contribution is forbidden.

CHAPTER II.—*General provisions*

ARTICLE 5

In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible historic monuments, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large rectangular panels of wood or of cloth, divided diagonally into two colored triangular portions, the upper portion black, the lower portion white.

ARTICLE 6

The commander of the attacking naval forces, before commencing the bombardment, shall do his utmost to warn the authorities, if the military situation permits.

ARTICLE 7

It is forbidden to give over to pillage a town or place even when taken by storm.

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LAYING OF AUTOMATIC SUBMARINE CONTACT MINES**Annex 9****PROPOSITION OF THE BRITISH DELEGATION****ARTICLE 1**

The use of unmoored automatic submarine contact mines is forbidden.

ARTICLE 2

Automatic submarine contact mines which on leaving their mooring-place do not become harmless are prohibited.

ARTICLE 3

The use of automatic submarine contact mines to establish or maintain a commercial blockade is forbidden.

ARTICLE 4

Belligerents can make use of automatic submarine contact mines only in their territorial waters or those of their enemies. Nevertheless, before fortified military ports this zone may be extended to a distance of ten miles from shore batteries, with the responsibility for the belligerent which places these mines to give notice thereof to neutrals and moreover to take the steps that circumstances permit in order to prevent, so far as possible, merchant ships that could not have received this notice from being exposed to destruction.

Only ports possessing at least a large graving-dock and equipped with the apparatus necessary for construction and repair of war vessels, and in which a staff of workmen paid by the State to effect the construction and repair of war vessels is maintained in time of peace, shall be considered as within the category of military ports.

ARTICLE 5

In a general way the necessary precautions shall be taken to safeguard neutral vessels engaged in a legitimate trade; and it is desirable that by reason of the very measures taken in the construction of automatic submarine contact mines these engines cease to be dangerous at the end of a suitable period of time.

ARTICLE 6

At the end of the war the belligerents shall mutually communicate so far as possible the necessary information as to the location of the automatic contact mines that each may have placed along the coasts of the other, and each belligerent must proceed with the utmost speed to remove the mines found in these territorial waters.

[661]

Annex 10

PRELIMINARY MOTION OF THE ITALIAN DELEGATION

ARTICLE 1

Unanchored automatic submarine contact mines must be furnished with an apparatus rendering them harmless one hour at the most after their placement.

ARTICLE 2

Anchored automatic contact mines must be constructed in such a way as to become harmless when, having broken their moorings, they are adrift on the sea.

Annex 11

AMENDMENT OF THE JAPANESE DELEGATION TO THE BRITISH PROPOSITION ¹

Replace Article 1 with the following provision:

ARTICLE 1

Unmoored automatic submarine contact mines are forbidden, with the exception of those manufactured in a way to become absolutely harmless after a limited time of submersion so as to offer no danger to neutral vessels outside the immediate sphere of hostile actions.

Annex 12

AMENDMENTS OF THE NETHERLAND DELEGATION TO THE PROPOSITION OF THE BRITISH DELEGATION ¹

ARTICLE 4

Omit the part of the article after the words "guns on land."

Insert the following phrases:

The same applies to neutrals wishing to place mines in their territorial waters to prevent access to their territory.

In all cases straits uniting two open seas cannot be barred.

¹ Annex 9.

ARTICLE 5

Add the following phrase at the beginning of the article: "The laying of mines in territorial waters should be published, and besides."

Omit the word "neutral" in the second line.

[662]

ARTICLE 6

Insert the words "or neutral" in the fourth line after the word "belligerent." Change the word "these" in the last line into "its."

Add an article worded thus:

ARTICLE 7

The loss of non-hostile personnel or material caused by the drifting of mines outside of notified regions must be compensated for by the Government that laid them.

Text of Articles 4, 5, and 6 as modified by the above amendments

ARTICLE 4

Belligerents can make use of automatic submarine contact mines only in their territorial waters or those of their enemies. Nevertheless, before fortified war ports this zone can be extended up to a distance of ten miles from the guns on land. The same applies to neutrals wishing to place mines in their territorial waters to prevent access to their territory.

In all cases straits uniting two open seas cannot be barred.

ARTICLE 5

The laying of mines in territorial waters should be published, and besides in a general way the necessary precautions shall be taken to safeguard vessels engaged in a legitimate trade; and it is desirable that by reason of the very provisions made in the construction of automatic submarine contact mines these engines cease to be dangerous at the end of a suitable period of time.

ARTICLE 6

At the end of the war the belligerents shall mutually communicate so far as possible the necessary information as to the location of the automatic contact mines that each may have placed along the coasts of the other, and each belligerent or neutral must proceed with the utmost speed to remove the mines found in its territorial waters.

Annex 13

AMENDMENT OF THE BRAZILIAN DELEGATION TO THE BRITISH PROPOSITION ¹

Add a new article:

Submarine mines exploding under the action of an impulse given with the knowledge of the authorities of a State can be laid by that State in its territorial waters for the purpose of ensuring respect for its neutrality.

¹ Annex 9.

Once these submarine mines are set, a notice thereof should be given, and from that moment it will have no further responsibility in case of displacement of these mines.

[663]

Annex 14

AMENDMENTS OF THE SPANISH DELEGATION TO THE PROPOSITION OF THE BRITISH DELEGATION ¹

ARTICLE 2

So long as there have not been found means recognized as efficacious by an international technical commission for rendering automatic contact mines harmless when they leave their moorings, they are prohibited.

ARTICLE 4

Belligerents can make use of submarine contact mines only in their territorial waters or in those of their enemies *when they exercise effective control over them.*

Annex 15

DECLARATION OF THE DELEGATION OF CHINA RELATIVE TO THE PROPOSITION OF THE DELEGATION OF GREAT BRITAIN ¹

The delegation of China declares that it adheres to the proposition of Great Britain relative to a draft regulation concerning the employment of automatic submarine contact mines.

On the same occasion the delegation desires to bring to the attention of the delegates certain facts which, it dares to hope, will suggest the examination of this important proposition in a largely humanitarian manner.

The Chinese Government is even to-day under the necessity of equipping the vessels in its coastwise trade with special instruments to pick up and destroy the floating mines which encumber not only the high sea but also its territorial waters. In spite of every precaution being taken, a very considerable number of coasting trade boats, fishing boats, junks and sampans have sunk as a consequence of collisions with these automatic submarine contact mines, and these vessels have been utterly lost with their cargoes without the details of the disasters reaching the western world. It is calculated that from five to six hundred of our countrymen in the pursuit of their peaceful occupations have met a cruel death through these dangerous engines.

¹ Annex 9.

Annex 16**AMENDMENT OF THE GERMAN DELEGATION TO THE
PROPOSITION OF THE BRITISH DELEGATION¹****ARTICLE 4**

Add the following provision:

The laying of automatic contact mines shall also be permitted in the theater of war; and that area of the sea shall be considered as a theater of the war upon which is taking place or has just taken place an operation of war or upon which such an operation may take place in consequence of the presence or the approach of the armed forces of the two belligerents.

[664]

Annex 17**AMENDMENT OF THE DELEGATION OF THE UNITED STATES TO
THE PROPOSITION OF THE BRITISH DELEGATION¹**

1. Unanchored automatic contact mines are prohibited.
2. Anchored automatic contact mines which do not become innocuous on getting adrift are prohibited.
3. If anchored automatic contact mines are used within belligerent jurisdiction or within the area of immediate belligerent activities, due precautions shall be taken for the safety of neutrals.

Annex 18**AMENDMENT OF THE RUSSIAN DELEGATION TO THE
PROPOSITION OF THE BRITISH DELEGATION¹**

1. Belligerents shall use anchored automatic submarine contact mines constructed so far as possible in such a way as to become harmless when they have broken from their moorings.
2. Automatic floating mines shall be constructed so far as possible in such a way as to become harmless after a certain period following their placing.
3. Torpedoes shall be constructed so far as possible in such a way as to become harmless when they have missed their mark.
4. Sufficient time shall be granted Governments to put perfected mine equipment into use.

¹ Annex 9.

[665]

Annex 19**SYNOPTIC TABLE OF THE PRECEDING PROPOSITIONS AND AMENDMENTS ¹****ARTICLE 1**

It is forbidden to lay anchored automatic submarine contact mines beyond the limit indicated in Article 2.

German amendment

Nevertheless, the laying of automatic contact mines shall also be permitted on the theater of war; and that area of the sea shall be considered as a theater of the war upon which is taking place or has just taken place an operation of war or upon which such an operation may take place in consequence of the presence or the approach of the armed forces of the two belligerents.

ARTICLE 2

(The limit mentioned in Article 1 extends to three nautical miles from the low-water mark along the whole extent of the coast. For bays it follows the sinuosities of the coast except that it is measured from a straight line drawn across the bay in the part nearest the opening towards the sea where the spread between the two coasts of the bay is six nautical miles in width.)* Before fortified military ports the limit may be extended to a distance of ten miles from shore batteries.

(Fortified ports shall be considered as war ports if they possess at least a large graving-dock and are equipped with the apparatus necessary for construction and repair of war vessels, and if there is maintained there in time of peace a body of workmen paid by the State to effect the construction and repair of war vessels.)

* The text between parentheses is new.

Netherland amendment

Omit the phrase between parentheses.

¹ Annexes 9-18. The British proposition, slightly modified as to form, is taken as a basis.

[666] ARTICLE 3

Spanish amendment

It is forbidden to lay submarine contact mines in waters where the Government laying them does not exercise effective control.

ARTICLE 4

It is forbidden to employ automatic submarine contact mines to establish or maintain a commercial blockade.

ARTICLE 5

Netherland amendment

In straits uniting two seas it is forbidden to lay mines in such a way that these straits cannot be passed by neutral vessels.

ARTICLE 6

Italian amendment accepted by the British delegation

It is forbidden to employ unanchored automatic contact mines which are not furnished with an apparatus rendering them harmless at the most . . . after laying them.

Japanese amendment

Unmoored automatic submarine contact mines are forbidden with the exception of those constructed in a way to become absolutely harmless after a limited time of submersion so as to offer no danger to neutral vessels outside the immediate sphere of hostile actions.

Russian amendment

Automatic floating mines shall be constructed so far as possible in such a way as to become harmless after a certain period following their placing.

American amendment

Unanchored automatic contact mines are prohibited.

ARTICLE 7

Submarine contact mines which on breaking their moorings do not become harmless are prohibited.

Italian amendment

Anchored automatic contact mines must be constructed in such a way as to become harmless when, having broken their moorings, they are adrift on the sea.

[667]

Spanish amendment

So long as there have not been found means recognized as efficacious by an international technical commission for rendering automatic contact mines harmless when they leave their moorings, they are prohibited.

Russian amendment

Belligerents shall use anchored automatic submarine contact mines constructed so far as possible in such a way as to become harmless when they have broken from their moorings.

American amendment

Anchored automatic contact mines which do not become innocuous on getting adrift are prohibited.

Brazilian amendment

Submarine mines exploding under the action of an impulse given with the knowledge of the authorities of a State can be laid by that State in its territorial waters for the purpose of ensuring respect for its neutrality. Once these submarine mines are set a notice thereof should be given, and from that moment it will have no further responsibility in case of displacement of these mines.

ARTICLE 8

Russian amendment

Torpedoes shall be constructed so far as possible in such a way as to become harmless when they have missed their mark.

ARTICLE 9

The laying of automatic contact mines must be *published*,* and besides in a general way the *necessary*† precautions must be taken to safeguard neutral vessels engaged in a legitimate trade. At the end of the war [668] the belligerents mutually communicate so far as possible the necessary information as to the loca-

** Netherland amendment*

† Alternative: *possible*.

tion of the automatic contact mines that each may have placed along the coasts of the other, and each belligerent *or neutral*‡ must proceed with the utmost speed to remove the mines that they have placed.

‡ *Netherland amendment*

American amendment

If anchored automatic contact mines are used within belligerent jurisdiction or within the area of immediate belligerent activities, due precautions shall be taken for the safety of neutrals.

ARTICLE 10

Netherland amendment

The loss of non-hostile personnel or *matériel* caused by the placing of mines beyond the notified areas must be made good by the Government that laid them.

ARTICLE 11

Russian amendment

A sufficient period of time shall be accorded Governments to put into use perfected mine apparatus.

Annex 20

AMENDMENT OF THE GERMAN DELEGATION TO THE SYNOPTIC TABLE¹

ARTICLE 1

Add the following provision:

The laying of automatic contact mines shall also be permitted in the area of the immediate activity of the belligerents, provided precautions are taken for the safety to which neutrals are entitled.

¹ Annex 19.

[669]

Annex 21**AMENDMENT OF THE NETHERLAND DELEGATION TO THE
SYNOPTIC TABLE ¹****ARTICLE 1**

Add the following provision:

Nevertheless, anchored contact mines, if under control, may also be employed in the area of the immediate activity of the belligerents, provided the necessary precautions are taken for the safety to which neutrals are entitled.

Annex 22**AMENDMENTS OF THE NETHERLAND DELEGATION TO THE
SYNOPTIC TABLE ¹****ARTICLE 1**

Add the following provision:

Nevertheless, anchored automatic contact mines shall be permitted within the area of the immediate activity of the belligerents, provided precautions are taken for the safety to which neutrals are entitled; it is especially necessary if these mines are left to themselves that they cease to be harmful after a maximum period of two hours.

ARTICLE 5

In any case, the communication between two open seas cannot be barred entirely, and passage will be permitted only on conditions which are indicated by the competent authorities.

Annex 23**PROPOSAL OF THE GERMAN DELEGATION BASED ON THE
DIFFERENT PROPOSITIONS AND AMENDMENTS ALREADY
SUBMITTED****I*****United States, Japan, Germany***

The laying of automatic contact mines is permitted to belligerents only in their territorial waters and those of their adversaries, and in the area of the immediate activity of the belligerents.

¹ Annex 19

[670]

II

Japan

Unanchored automatic contact mines are forbidden with the exception of those constructed in such a way as to become harmless after a limited time, so as to offer no danger to neutral vessels.

III

United States

Anchored automatic contact mines which do not become innocuous on getting adrift are prohibited.

IV

United States, Netherlands, Germany

If anchored contact mines are employed, all necessary precautions must be taken for the safety of legitimate navigation.

The belligerents undertake especially in case these mines are left to themselves to notify, as soon as possible, the danger zones to the public, or to render them harmless within a limited time, so that a peril to legitimate shipping may, as far as possible, be removed.

V

Russia

A sufficient period of time shall be given Governments to put into use perfected mine apparatus.

VI

England

At the latest, at the end of the war each belligerent removes the mines placed outside its territorial waters. Moreover, belligerents mutually communicate the necessary information as to the placing of the automatic contact mines that each has laid along the coasts of the other, and each belligerent or neutral must proceed as soon as possible to the removal of the mines found in its waters.

Annex 24**AMENDMENT OF THE NETHERLAND DELEGATION TO THE
SYNOPTIC TABLE ¹****ARTICLE 2**

Before military ports the limit may be extended to a distance of six nautical miles from the shore batteries.

Military ports shall be considered to be those which appear as such in the official list of the navy.

¹ Annex 19.

[671]

Annex 25**AMENDMENT OF THE DELEGATION OF GREAT BRITAIN TO THE
SYNOPTIC TABLE¹****ARTICLE 4**

Add to the end of Article 4:

The laying by a belligerent of automatic contact mines before a commercial port of its adversary is not authorized except when there is anchored there at least one large fighting unit.

Annex 26**TEXT OF DRAFT REGULATIONS BASED UPON THE DELIBERATIONS
OF THE COMMITTEE OF EXAMINATION****ARTICLE 1**

It is forbidden:

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who lays them has ceased to control them;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;
3. To use torpedoes which do not become harmless when they have missed their mark.

ARTICLE 2

It is forbidden to lay anchored automatic contact mines beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line, as well as along the islands and banks adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

ARTICLE 3

Off military ports the limit for the laying of mines is extended to a distance of ten nautical miles.

As military ports are considered those ports which have been decreed as such by the State to which they belong and those where naval construction plants are situated.

[672]

ARTICLE 4

Within the limits indicated in the two preceding articles, the belligerents have the right to lay anchored automatic contact mines in the waters of their adversaries.

However, it is forbidden to lay automatic contact mines there with the sole object of intercepting commercial shipping.

¹ Annex 19.

ARTICLE 5

Within the sphere of their immediate activity, the belligerents have likewise a right to lay automatic contact mines outside the limits fixed in Articles 2 to 4 of the present regulations.

Mines used outside the limits fixed in Articles 2 to 4 must be so constructed as to become harmless within two hours at most after the person who lays them has abandoned them.

ARTICLE 6 (*Reserved*)

Communication between two open seas shall not be entirely barred by automatic contact mines. But passage through shall be subject to the conditions decreed by the competent authorities.

The provision of paragraph 1 does not prejudice in any way the rules established by existing treaties and conventions, nor the rights of territorial sovereignty.

ARTICLE 7

When anchored contact mines are used, every possible precaution must be taken for the safety of navigation.

The Governments undertake especially, in case these mines should cease to be under surveillance, to notify the danger zones, as soon as it can be done, and to do their utmost to render them harmless within a limited time.

ARTICLE 8

At the end of the war, at the latest, the belligerents shall be obliged to do all in their power to remove, respectively, the mines which they have each laid outside the limits imposed by Articles 2 and 3.

They shall reciprocally communicate the necessary information regarding the automatic contact mines which each has laid along the coasts of the other.

Each State must proceed with the least possible delay to remove the mines in its own waters.

ARTICLE 9

A period of . . . years is allowed in which to put into use the perfected apparatus referred to in Articles 1, 5 and 7 of the present regulations.

ARTICLE 10

The stipulations of the present Convention are concluded for a period of seven years from the date of the deposit of ratifications.

[673]

Annex 27**AMENDMENT OF THE DELEGATION OF AUSTRIA-HUNGARY TO
THE DRAFT REGULATION¹**

The Austro-Hungarian navy has, at the present time, no anchored automatic contact mines fulfilling the conditions referred to in Article 1, paragraph 2, of the text based upon the deliberations of the committee of examination, which become harmless when they break loose from their moorings. In order to conform to the clause in question, the Austro-Hungarian navy would therefore be under the necessity of proceeding to a transformation of its mine material. For this transformation the Austro-Hungarian delegation could not however accept either the period of three years proposed or any other period fixed in advance as a measure of this kind contains, independently of individual volition, an element of uncertainty that, as long as it exists, is inconsistent with entering into a formal engagement that perhaps could not be fulfilled.

In every improvement in technical matters the time when one may reach a satisfactory solution of a problem under study can scarcely be indicated in advance. Even if the scientific principle upon which the invention to be made rests were most simple from a theoretical point of view, obstacles absolutely unforeseen and very often difficult to overcome may at any turn occur to prevent the practical realization of the idea.

It is also necessary not to lose sight in the case before us of the fact that it would not be sufficient to construct an apparatus of perfect action by means of which a mine on breaking loose from its moorings would be automatically rendered harmless; there is equally the problem, and this seems to me to be of no less importance, of giving the apparatus in question such a construction that the other mechanical parts of the mine are not altered to the prejudice of its military value, so that the mine remains simple and not dangerous to handle without losing its effectiveness. It is only after having tested the apparatus to be constructed from different points of view, which in all probability will necessitate a series of lengthy experiments, that we can accomplish the change in the material of mines and then indicate approximately the time in which this operation can be brought to an end.

Now if in existing circumstances we were to fix in conventional form a period running from now on for the adoption of perfected mines, and if at the expiration of the time the change in question were not yet executed by one of the contracting Powers, this latter would find itself in a most embarrassing situation. For it would be obliged, if a war should break out in the interval, either to renounce the use of mines not yet converted or to fail in its conventional engagement. Both of these eventualities must necessarily be obviated. It therefore seems to us that if we take seriously the engagement in question, we cannot accept a period fixed in advance in the matter.

In accordance with these ideas the delegation of Austria-Hungary permits itself to propose the following amendments:

¹ Annex 26.

ARTICLE 1

Add to paragraph 2 the following:

The maritime Powers which do not at present own these perfected mines, and which consequently could not at present be a party to this prohibition, undertake to convert, as soon as possible, the *matériel* of their mines so as to bring them into conformity with the foregoing condition.

ARTICLE 9

Omit this article.

The fact that the conversion of mines is desirable not only for humanitarian reasons but also in the very interest of the Powers, offers a sufficient guaranty that the undertaking set forth in the above proposal will be faithfully carried out. In this way the humanitarian aim in view will be attained as soon as the means are provided. To do otherwise and to accept a particular period measured from the present for the conversion of mines would be, in the opinion of the delegation of Austria-Hungary, to make an engagement with a mental reservation which evidently would hardly be in harmony with the absolute obligation resulting from a conventional stipulation.

As to the unanchored mines referred to in the first paragraph of Article 1, the delegation of Austria-Hungary entirely supports the observations presented on this subject by the naval delegate of Great Britain, and thinks that we might well get along without a provision analogous to that just mentioned or of any other provision fixing a definite time.

As to the provision of the second paragraph of Article 5, the delegation of Austria-Hungary has no proposal to make, as the clause in question seems to it unacceptable in principle.

Annex 28

AMENDMENT OF THE DELEGATION OF GREAT BRITAIN TO
ARTICLE 9 OF THE TEXT OF THE DRAFT REGULATION¹

ARTICLE 9

Add a second paragraph worded thus:

Until a belligerent is provided with mines constructed so as to fulfill the condition contained in the second paragraph of Article 5, it is forbidden to place anchored automatic contact mines beyond the limits fixed by Articles 2 to 4.

¹ Annex 26.

'Annex 29**NEW WORDING TO BE SUBSTITUTED IN ARTICLES 3 AND 4 OF
THE TEXT OF THE DRAFT REGULATIONS¹****ARTICLE 3**

The limit for the laying of mines is extended to a distance of ten nautical miles off military ports and ports where there are either military arsenals or establishments of naval construction or repair.

[675] As military ports are considered those ports which have been decreed as such by the State to which they belong.

ARTICLE 4

Off the coasts and ports of their adversaries, the belligerents may lay anchored automatic contact mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports where establishments of naval construction or repair are situated when the said establishments do not belong to the State.

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

'Annex 30**PROPOSITION OF HIS EXCELLENCY MR. HAGERUP, PRESIDENT
OF THE COMMITTEE OF EXAMINATION****NEW ARTICLE**

Every neutral State which places submarine mines off its coasts must observe the same rules and take the same precautions as are imposed upon belligerent States in the use of similar mines.

Annex**DRAFT REGULATIONS PRESENTED TO THE COMMISSION****ARTICLE 1**

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who laid them ceases to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

¹Annex 26.

3. To use torpedoes which do not become harmless when they have missed their mark.

ARTICLE 2

It is forbidden to lay anchored automatic contact mines beyond a distance of three nautical miles from low-water mark, throughout the length of the coastline, as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

[676]

ARTICLE 3

The limit for the laying of anchored automatic contact mines is extended to a distance of ten nautical miles off military ports and ports where there are either military arsenals or establishments of naval construction or repair.

As military ports are considered those ports which have been decreed as such by the State to which they belong.

ARTICLE 4

Off the coasts and ports of their adversaries, the belligerents may lay anchored automatic contact mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports which are not military ports, unless establishments of naval construction or repair belonging to the State are situated therein.

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

ARTICLE 5

Within the sphere of their immediate activity, the belligerents have likewise a right to lay automatic contact mines outside the limits fixed in Articles 2 to 4 of the present regulations.

Mines used outside the limits fixed in Articles 2 to 4 must be so constructed as to become harmless within two hours at most after the person using them has abandoned them.

ARTICLE 6

When anchored contact mines are used, every possible precaution must be taken for the safety of navigation.

The Governments undertake especially, in case these mines should cease to be under surveillance, to notify the danger zones, as soon as it can be done, and to do their utmost to render them harmless within a limited time.

ARTICLE 7

At the end of the war, at the latest, the signatory States shall be obliged to do all in their power to remove, respectively, the mines which they have each laid.

As regards anchored contact mines which one of the belligerents may have placed along the coasts of the other, the signatory States agree to notify the other party of their location, and each State must proceed with the least possible delay to remove the mines in its own waters.

ARTICLE 8

The signatory States which do not at present own perfected mines of the kind contemplated in the present regulations, and which consequently could not at present carry out the rules laid down in Articles 1, 5 and 6, undertake [677] to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

Until a belligerent has become supplied with mines constructed so as to answer to the conditions of Article 5, paragraph 2, he is forbidden to place anchored automatic contact mines outside the limits fixed in Articles 2 to 4.

It is forbidden to use unanchored automatic contact mines which do not answer to the condition stipulated in Article 1, paragraph 1, one year after the present Convention goes into force.

ARTICLE 9

The stipulations of the present Convention are concluded for a period of five years from the date on which the present Convention takes effect.

ARTICLE 10

The signatory Powers express the hope that they may have occasion to resume consideration of the question of the use of submarine mines six months before the expiration of the period provided in Article 9.

Annex 32**AMENDMENT OF THE BRITISH DELEGATION TO THE DRAFT
REGULATIONS PRESENTED TO THE COMMISSION¹**

ARTICLE 5

Omit this article.

In case this amendment is accepted:

ARTICLE 9

Omit paragraph 2 of this article.

ARTICLE 4

Substitute the following for paragraph 3:

It is forbidden to lay automatic contact mines before the ports of the adversary other than those which are considered as war ports, according to the definition contained in Article 3, paragraph 2.

ARTICLE 10

Substitute the following for this article:

The stipulations of the present Convention are concluded for a period of seven years, beginning with the taking effect of the present Convention or until the closing of the Third Peace Conference, if that date is earlier.

¹ Annex 31.

The signatory Powers engage to take up the question of the use of submarine mines six months before the expiration of the period of seven years provided for in paragraph 1, in case it has not been taken up and settled by the Third Peace Conference at an earlier date.

[678]

Annex 33

AMENDMENT OF THE NETHERLAND DELEGATION TO THE DRAFT REGULATIONS PRESENTED TO THE COMMISSION ¹

As no mention of "straits" has been made in the draft regulations respecting the laying of automatic contact mines, it might be thought that the different stipulations relating to mines contained in these regulations apply quite as well to straits as to other regions of the sea.

But this interpretation is found to be utterly inconsistent with what is said in the report preceding the draft regulations. In short, we there read the following: ²

Owing to these reservations and declarations the committee unanimously decided to omit any provision concerning straits, which should remain unaffected by any stipulation in the present regulations; it was distinctly laid down that by the stipulations of the Convention to be concluded no change whatever is made in the present status of straits, which is in nowise affected by the provisions on the use of mines.

As is seen, there is a capital contradiction between the draft regulations and the report as regards the status of straits in their relation to mines. In order to define clearly what the Convention is meant to establish, the delegation of the Netherlands proposes to add to the draft regulations an article worded as follows:

ARTICLE 10

This Convention does not modify the present status of straits in any degree.

Annex 34

AMENDMENT PROPOSED BY THE DELEGATION OF TURKEY TO THE DRAFT REGULATIONS PRESENTED TO THE COMMISSION ¹

ARTICLE 3

Add to the second paragraph of the article:

The provisions of this article are applicable also to ports whose entrance is defended by forts and fortifications.

¹ Annex 31.

² See the end of p. 409 [407].

[679]

Annex 35**TEXT OF THE DRAFT REGULATIONS BASED UPON THE
DELIBERATIONS OF THE COMMISSION****ARTICLE 1**

It is forbidden :

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them ;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings ;
3. To use torpedoes which do not become harmless when they have missed their mark.

ARTICLE 2

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

ARTICLE 3

When anchored automatic contact mines are employed, every possible precaution must be taken for the safety of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship-owners, which must also be communicated to the Governments through the diplomatic channel.

ARTICLE 4

Any neutral Power which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice must be communicated at once to the Governments through the diplomatic channel.

ARTICLE 5

At the close of the war the contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents along the coasts of the other, their position must be notified by the Power which laid them to the other party, and each Power must proceed with the least possible delay to remove the mines in its own waters.

ARTICLE 6

The contracting Powers which do not at present own perfected mines of the kind contemplated in the present regulations, and which, consequently, could not at present carry out the rules laid down in Articles 1 and 3, undertake to convert

the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

[680]

ARTICLE 7

The stipulations of the present regulations are concluded for a period of seven years or until the close of the Third Peace Conference, if that date is earlier.

The contracting Powers undertake to reopen the question of the employment of automatic submarine contact mines six months before the expiration of the period of seven years, in the event of the question not having been already reopened and settled by the Third Peace Conference.

In the absence of a stipulation of a new Convention the present regulations will continue in force unless the present Convention is denounced. The denunciation shall not have effect (with regard to the notifying Power) until six months after the notification.

Annex 36

AMENDMENT OF THE DELEGATION OF COLOMBIA TO THE DRAFT REGULATIONS BASED UPON THE DELIBERATIONS OF THE COMMISSION ¹

Omit Article 2 and paragraph 2 of Article 5 and substitute the following provisions:

ARTICLE 2

The employment of anchored automatic contact mines is absolutely forbidden except as a means of defense.

Belligerents may not employ such mines except for the protection of their own coasts and only within a distance of the greatest range of cannon.

In the case of arms of the sea or navigable maritime channels leading exclusively to the shores of a single Power, that Power may bar the entrance for its own protection by laying anchored automatic contact mines.

Belligerents are absolutely forbidden to lay anchored automatic contact mines in the open sea or in the waters of the enemy.

Annex 37

AMENDMENT OF THE BRITISH DELEGATION TO THE DRAFT REGULATIONS ADOPTED ON THE BASIS OF THE DELIBERATIONS OF THE COMMISSION ¹

ARTICLE 6

Add to the article a paragraph as follows:

The prohibition against using automatic contact mines which do not answer to the conditions of Article 1 shall come into force for unanchored mines one year and for anchored mines three years after the ratification of the present Convention.

¹ Annex 35.

[681]

**AMENDMENTS TO THE HAGUE CONVENTION OF JULY 29, 1899,
FOR THE ADAPTATION TO MARITIME WARFARE OF THE
PRINCIPLES OF THE GENEVA CONVENTION OF AUGUST
22, 1864**

Annex 38

**TEXT OF THE CONVENTION FOR THE ADAPTATION TO MARI-
TIME WARFARE OF THE PRINCIPLES OF THE GENEVA
CONVENTION OF AUGUST 22, 1864**

ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with the view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE 4

The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

[682] The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above-mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his [683] own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent their again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

ARTICLE 11

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

ARTICLE 12

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 13

Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 14

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

Annex 39

PROPOSAL OF THE GERMAN DELEGATION

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture on condition that they are placed in the service

[684] of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter notifies their name to his adversary at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE 5

At the end of the article a new paragraph:

As a distinguishing mark all hospital ships shall carry during the night three lights—green, white, green—placed vertically, one above the other, and at least three meters apart.

ARTICLE 5a (*new*)

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent in whose service they are placed.

Hospital ships which fall into the power of the enemy must lower the national flag of the belligerent to whom they belong.

ARTICLE 5b (*new*)

The distinguishing signs referred to in Article 5 and in paragraph 1 of Article 5a can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ARTICLE 5c (*new*)

During the fight the sick wards on board the war vessels shall be respected and spared as far as possible.

The sick wards and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commanders, however, of the vessels can apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ARTICLE 5d (*new*)

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

ARTICLE 5e (*new*)

The following are not sufficient reasons for withdrawing the protection mentioned in Article 5d:

1. The fact of the staff of the hospital ships or sick wards of the vessels being armed and using its arms for its own defense and for that of its sick and wounded.

2. The fact that in the absence of armed members of the medical staff the hospital ship is guarded by a picket or sentinels regularly appointed.

3. The fact that there is found on board of the hospital ship or in the

sick ward of the vessel arms and cartridges taken from the wounded and not yet delivered to the proper office.

[685] 4. The fact that the hospital ship is armed with pieces of light ordnance to guard against the dangers of navigation and particularly as a protection against any act of piracy.

ARTICLE 6 (*new*)

Belligerents may ask neutral merchant ships, yachts or boats to take on board and tend, under their control, the sick and wounded, and may give to the vessels that respond to such request special protection and certain immunities.

Every vessel of war of one of the belligerent parties may claim the return of the sick, wounded, or shipwrecked received on board in the conditions above indicated (paragraphs 1 and 2), whatever be the party to which they belong.

ARTICLE 7

The last paragraph to read:

The belligerents must guarantee to the said staff, when it has fallen into their hands, the same allowances in pay which are given to the staff of corresponding rank in their own navy.

ARTICLE 8

Sailors and soldiers on board, as well as other persons officially attached to fleets or armies, when sick or wounded, whatever their nationality, shall be respected and tended by the captors.

ARTICLE 9

The last paragraph to read:

If they are going to a neutral port, the neutral State cannot, without the consent of the adversary, undertake the engagement and intern them to the end of hostilities. If they are bound to a port of the adversary, the prisoners thus returned to their country cannot serve again while the war lasts.

ARTICLE 10 (*new*)

After every engagement, the two belligerents, to the extent that military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill-treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpse.

ARTICLE 10*b* (*new*)

Each belligerent shall send, as early as possible, to the authorities of their country, navy, or army, the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers, as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

[686]

ARTICLE 11*a* (*new*)

The commanders in chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ARTICLE 11*b* (*new*)

The signatory Governments shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

ARTICLE 11*c* (*new*)

The signatory Governments likewise undertake to enact or to propose to their legislatures, if their military criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 (and in paragraph 1 of Article 5*a*) by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

ARTICLE 11*d* (*new*)

In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

Annex 40**AMENDMENTS TO THE PROPOSAL OF THE GERMAN DELEGATION¹ SUBMITTED BY THE NETHERLAND DELEGATION**ARTICLE 5*c* (*new*)

Sub. 1. Omit the words: "and using its arms."

Insert at the end the words: "against acts of piracy."

Sub. 4. Omit entirely and substitute by the following clause: "the fact that the hospital ship is equipped with wireless telegraphy apparatus."

ARTICLE 6

Third paragraph: Omit the whole paragraph.

¹ Annex 39.

[687]

ARTICLE 8

Word the article as follows:

Sailors, soldiers, and other persons officially attached to fleets or armies, when sick or wounded, whatever their nationality, shall be respected and tended by the captors.

ARTICLE 9

Omit the German amendment.

ARTICLE 10

Retain the original text and add a new paragraph:

In case a belligerent obtains permission to disembark shipwrecked, wounded, or sick prisoners of war, it waives the right of capture and they are free.

ARTICLE 11

Second paragraph, second line, read: "of the Netherland Government."

Annex 41

PROPOSITION OF THE FRENCH DELEGATION

ARTICLE 9a (*new*)

Insert a new article, between Articles 9 and 10, worded thus:

If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, measures must be taken that they do not again take part in the operations of the war.

Annex 42PROPOSITION OF THE DELEGATION OF FRANCE CONCERNING
THE ADDITIONS TO BE MADE TO THE CONVENTION OF 1899
FOR THE ADAPTATION TO MARITIME WARFARE OF THE
PRINCIPLES, ETC., ETC.

Restore to the text of the Convention Article 10 which is worded as follows:

ARTICLE 10

The shipwrecked, wounded, or sick, who are landed at a neutral port with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

[688]

Annex 43**TEXT OF THE HAGUE CON-
VENTION OF JULY 29, 1899****ARTICLE 1**

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with the view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has

**TEXT PROPOSED BY THE COM-
MITTEE OF EXAMINATION****ARTICLE 1**

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with the view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed in the service of one of the belligerents, with the previ-

notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

ous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case before they are employed.

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ARTICLE 4

The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

ARTICLE 4

The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a

neutral State, by flying at the mainmast the national flag of the belligerent in whose service they are placed.

Hospital ships which, in the terms of Article 4, are detained by the enemy, must take down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must take the necessary measures to render their special painting sufficiently plain.

ARTICLE 6 (*new*)

The distinguishing signs referred to in Article 5 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ARTICLE 7 (*new*)

In the case of a fight on board a warship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ARTICLE 8 (*new*)

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on

board, is not a sufficient reason for withdrawing protection.

ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

[691] This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

ARTICLE 9

Belligerents may appeal to the charity of the commanders of neutral merchant ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board.

ARTICLE 10

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the same allowances and pay which are given to the staff of corresponding rank in their own navy.

ARTICLE 11

Sailors and soldiers on board when sick or wounded, as well as other persons officially attached to fleets or armies, to whatever nation they belong, shall be respected and tended by the captors.

ARTICLE 12 (*new*)

Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or

boats, whatever the nationality of these vessels, should be handed over.

ARTICLE 13 (*new*)

If sick, wounded, or shipwrecked persons are taken on board a neutral warship, measures must be taken that they do not again take part in the operations of the war.

ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 10 (*not ratified*)

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

[692] The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

ARTICLE 14

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 15

The shipwrecked, wounded, or sick who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

ARTICLE 16 (*new*)

After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill-treatment.

They shall see that the burial, whether by land or sea, or *cremation* of the dead shall be preceded by a careful examination of the corpse.

ARTICLE 17 (*new*)

Each belligerent shall send, as early as possible, to the authorities of their country, navy, or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

ARTICLE 11

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

ARTICLE 18

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

ARTICLE 19 (*new*)

The commanders in chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ARTICLE 20 (*new*)

The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled

thereunder to immunity, and for making them known to the public.

[693]

ARTICLE 21 (*new*)

The signatory Powers likewise undertake to enact or to propose to their legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

ARTICLE 22 (*new*)

In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

ARTICLE 12

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 13

Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notifica-

ARTICLE 23

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 24

Non-signatory Powers which have accepted the Geneva Convention of July 6, 1906, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notifica-

tion addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

tion addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 25 (*new*)

The present Convention, duly ratified, shall replace as between contracting States, the Convention of July 29, 1899.

The Convention of 1899 remains in force as between the Powers which signed it but which do not also ratify the present Convention.

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ARTICLE 14

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

ARTICLE 26

In the event of one of the high contracting parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague . . . in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

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RIGHTS AND DUTIES OF NEUTRAL POWERS IN NAVAL WAR**Annex 44****PROPOSAL OF THE BRITISH DELEGATION***Project of Convention***ARTICLE 1**

A neutral State is bound to take measures to preserve its neutrality only after it has received from one of the belligerents a notification of the commencement of the war.

ARTICLE 2

Every belligerent is bound to respect the sovereign rights of a neutral State and to abstain in neutral territory or territorial waters from any act which, if it were committed with the express permission of the neutral Government, would constitute a violation of neutrality.

ARTICLE 3

A neutral State is forbidden to sell, either directly or indirectly, to a belligerent Power vessels of war, arms, supplies or any other war material belonging to the said State.

ARTICLE 4

A neutral State is bound to do its utmost to prevent a belligerent from committing hostile acts within its territorial waters.

ARTICLE 5

A neutral State must likewise prevent so far as possible any acts within the limits of its jurisdiction toward arming or equipping a war-ship or toward the conversion of a merchant vessel into a war-ship by one of the belligerents.

ARTICLE 6

A neutral State cannot knowingly permit a war-ship lying within its jurisdiction to take on board officers, men, or guns, or to increase in any degree its strength as a fighting unit.

ARTICLE 7

The neutral State is bound to use due diligence to prevent within its territorial waters the construction, arming, or equipping, whether altogether [696] or in part, of any vessel which it has reasonable ground to believe is intended to serve in the navy of a belligerent Power.

ARTICLE 8

The neutral State must use due diligence to prevent the departure from its jurisdiction of any vessel flying a merchant flag, which it has reasonable cause to believe is intended to serve in the navy of a belligerent Power.

ARTICLE 9

A neutral State must prevent, so far as possible, a part of its territory or of its territorial waters from being used as a base of operations by a belligerent fleet.

ARTICLE 10

A neutral territory or neutral territorial waters shall be deemed to serve as a base of operations to a belligerent when, for example:

(a) There has been installed on the neutral territory or on board a ship in the neutral waters a wireless telegraph station or any other apparatus intended to maintain communication with the war-ships of the belligerent;

(b) Belligerent vessels revictual in neutral waters by means of auxiliary vessels of their fleet.

ARTICLE 11

A neutral Power must give notice to every war vessel of a belligerent Power—known to be lying in its harbors or territorial waters at the time of the opening of hostilities—that it is to leave within twenty-four hours.

ARTICLE 12

A neutral Power must not knowingly permit a belligerent ship to stay in its ports or territorial waters for a period longer than twenty-four hours except in the cases provided for in articles of the present Convention.

ARTICLE 13

If war vessels or merchant ships of the two belligerent parties are in the same neutral harbor or roadstead at the same time the neutral Government must not permit a war vessel of one of the belligerents to leave the port or roadstead until twenty-four hours have elapsed since the departure of a war-ship or merchant ship of the other belligerent.

ARTICLE 14

If for any reason a belligerent war-ship does not leave the harbor or waters of a neutral Power after having received a notice that it must depart, it shall be interned until the end of the war by the neutral Power, except in case it has been detained by reason of stress of weather.

ARTICLE 15

When a war vessel of a belligerent takes refuge in neutral waters in order to escape pursuit by the enemy it is incumbent upon the Government of the neutral State to intern it until the end of the war.

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ARTICLE 16

A neutral Power must not knowingly permit a war-ship of a belligerent lying within its jurisdiction to take on board supplies, food, or fuel in order to go to meet the enemy or in order to enter upon operations of war.

ARTICLE 17

A neutral State must not knowingly permit a war-ship of a belligerent lying in its jurisdiction to take on board supplies, food or fuel except in case the supplies, food or fuel already on board the ship would not be sufficient for it to reach the nearest port of its own country; the quantity of supplies, food or fuel taken on board the ship in the neutral jurisdiction must not in any case exceed the quantity necessary to enable it to reach the nearest port of its own country.

ARTICLE 18

A neutral Power must not knowingly permit a war-ship of a belligerent lying in its jurisdiction to take on coal if the ship has already within the preceding three months taken on coal in the waters of the said neutral Power.

ARTICLE 19

A neutral State must not knowingly permit a war-ship of a belligerent to repair within its jurisdiction the injuries resulting from a combat with the enemy, nor in any case to make repairs in excess of what will be necessary for navigating.

ARTICLE 20

Shipwrecked, wounded or sick sailors disembarked in a neutral port with the consent of the local authorities must—in the absence of a contrary arrangement between the neutral State and the belligerents—be interned by the neutral State until the end of the war.

ARTICLE 21

The neutral Power shall have the right to take the measures that it may deem necessary—such, for example, as the removal of some essential parts of the machinery or the armament of the ship—to render the ship incapable of putting to sea during the existence of the war.

ARTICLE 22

When a belligerent ship is interned by a neutral Power the officers and crew shall likewise be interned unless the Government of the other belligerent party consents to their going to their own country.

ARTICLE 23

The officers and crew of a belligerent ship interned by a neutral Power may be lodged on land or on a ship, and may likewise be subjected to the restrictive measures that it may be deemed necessary to impose upon them.

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ARTICLE 24

The expense incurred by the neutral Government for the internment of the ship and the support or repatriation of its officers and crew shall be reimbursed by the Government of the country to which the interned vessel belongs.

ARTICLE 25

No prize court can be instituted upon neutral territory or upon a ship within neutral waters.

ARTICLE 26

A neutral Power cannot knowingly permit a belligerent to bring a prize into its jurisdiction unless the prize is short of fuel or provisions or is in danger by reason of unseaworthiness or stress of weather. The neutral Power shall not knowingly permit a prize to take on supplies, fuel, or provisions, or to make repairs beyond what is necessary to allow it to reach the nearest port of the belligerent country; the neutral Power must notify the prize that it is to depart as soon as possible after having effected the necessary repairs.

ARTICLE 27

Every belligerent prize brought into neutral waters to escape pursuit by the enemy shall be released with its officers and crew by the neutral Power, but the crew put on board the prize by the captor shall be interned.

ARTICLE 28

When a prize has been captured in territorial waters in violation of neutrality, the neutral Power shall, if the prize is still within its jurisdiction, release it, as well as its officers and crew, and intern the crew put on board by the captor; if the prize has left the neutral jurisdiction, the neutral Power shall address a protest to the belligerent Government, asking that the prize be released with its officers and crew and the belligerent Government shall take steps to that end.

ARTICLE 29

When a prize brought into neutral waters does not obey the order to depart communicated to it, if the delay is not occasioned by stress of weather, the neutral Power shall release it with its officers and crew and intern the crew put on board by the captor.

ARTICLE 30

A neutral State has the right to prohibit in whole or in part, if it deems it necessary, access to its ports or territorial waters by war-ships or prizes or even by certain ships or certain classes of ships of a belligerent Power, either for the entire duration of the war or for a fixed period of time.

[699]

ARTICLE 31

A neutral State is not bound to prevent its subjects from violating a blockade established by a belligerent (or from preventing the exportation from its territory of contraband articles) but it must not lend them aid and assistance for that purpose.

ARTICLE 32

None of the provisions contained in the preceding articles shall be interpreted so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent.

Annex 45**AMENDMENT OF THE DANISH DELEGATION TO THE PROPOSAL
OF THE BRITISH DELEGATION¹****FIRST ARTICLE**

Add to the article: "but if it mobilizes its military forces before receiving this notice, in order to prepare in good time for the defense of its neutrality, this fact shall not be considered as an unfriendly act towards either of the parties in conflict."

ARTICLE 32

Replace the words "so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent," with the words "so as to prohibit in time of war the mere passage through neutral waters joining two open seas by a war-ship or auxiliary ship of a belligerent."

[700]

Annex 46**PROPOSAL OF THE JAPANESE DELEGATION**

With a view to relieve neutrals of onerous and useless responsibility and at the same time to prevent misunderstandings resulting from differences in practice, the delegation of Japan has the honor to submit to the consideration of the Commission a project defining the status of belligerent ships in neutral waters.

ARTICLE 1

Belligerent ships are forbidden to make use of ports and neutral waters either as places for observation, or for *rendezvous*, or as bases of military operations or acts of any kind with military purposes.

ARTICLE 2

Belligerent vessels shall neither enter nor sojourn in neutral ports or waters more than twenty-four hours except in the following cases:

(a) In case stress of weather prevents the said vessels from putting to sea, the length of legal stay will be extended until the weather ceases being dangerous.

(b) An interval of not more nor less than twenty-four hours should be maintained between the departure from a neutral port or neutral waters of a merchant ship or a war-ship of one belligerent and the departure from the same neutral port or waters of a war-ship of the other belligerent. It is for the neutral State to decide which of the hostile vessels shall leave first.

¹ Annex 44.

ARTICLE 3

More than three belligerent vessels belonging to the same State or its allies cannot anchor at one time in the same neutral port or waters.

ARTICLE 4

Belligerent ships cannot in neutral ports or waters increase their war forces nor make repairs other than those indispensable to their safety in sailing, nor take on any supplies other than coal and provisions sufficient, added to what is already on board, to enable them to reach under an economical speed the nearest port of their own country or a neutral destination still nearer.

ARTICLE 5

Neither belligerent vessels proceeding to the theater of war or sailing in that direction or towards the zone of existing hostilities, nor those whose destination is doubtful or unknown can make repairs or take on coal or supplies in neutral ports or waters.

[701]

ARTICLE 6

Belligerent ships staying in neutral ports or waters beyond the limit of time allowed by the rules above, and taking on other supplies than those allowed by the said rules or violating in one way or another the limitations or restrictions imposed by the said rules, shall be disarmed and interned for the rest of the war by the neutral Powers to whom such ports or waters belong.

ARTICLE 7

Neutral States should take all necessary measures to secure the application of the present provisions.

Annex 47

PROPOSAL OF THE SPANISH DELEGATION

ARTICLE 1

War vessels shall not be allowed to enter or sojourn in neutral ports or waters and use them as bases of military operations whatever be the nature of such operations.

ARTICLE 2

Entry and stay in neutral ports and waters are forbidden to vessels bringing prizes except in the case of putting in by reason of *force majeure*.

ARTICLE 3

Belligerent vessels cannot stay more than twenty-four hours in neutral ports or waters except by reason of damage, stress of weather, or other *force majeure*.

ARTICLE 4

In the cases of compulsory putting in the said vessels must leave the neutral ports or waters as soon as their damages are repaired or the circumstances of *force majeure*, which caused their arrival or stay, shall have ended.

ARTICLE 5

Belligerent vessels cannot, during their stay in neutral ports or waters, take on war material nor any supplies of a kind to increase their military force. They may, nevertheless, provide themselves with food and coal necessary to reach the nearest port of their own country or a neutral port that is still nearer.

A belligerent vessel which has taken on supplies in a neutral port cannot do so again in any port of the same neutral country save after the lapse of a period of three months.

[702]

Annex 48

PROPOSAL OF THE RUSSIAN DELEGATION

ARTICLE 1

The conditions of stay of war-ships of belligerent States in neutral ports and waters should be regulated in the first place on the basis of respect for the immutable rights of sovereignty of neutral States.

ARTICLE 2

Any act of hostility is forbidden war-ships belonging to a belligerent State during their stay in neutral ports and territorial waters.

ARTICLE 3

It is likewise forbidden to said vessels to make use of neutral ports and territorial waters as bases of operations of war.

ARTICLE 4

It belongs to the neutral State to fix the period of stay to be accorded to war-ships of belligerent States in the ports and territorial waters belonging to that neutral State.

ARTICLE 5

The stay of war-ships of belligerent States in a neutral port may be prolonged if stress of weather, lack of provisions, or damage prevents the said ships from putting to sea.

ARTICLE 6

When war-ships and merchant ships of the two belligerent parties are simultaneously in a neutral port there shall be an interval of twenty-four hours

between the departure of ships of one of the belligerents and the subsequent departure of ships of the other belligerent.

The priority of request made by the ships of one of the belligerent States may be freely utilized by the other ships of the same belligerent that happen to be in the same port.

ARTICLE 7

It is forbidden war-ships of belligerent States during their stay in neutral ports and territorial waters to increase, by the aid of resources derived from the land, their war material or to reinforce their crew.

Nevertheless, the vessels above mentioned may provide themselves with food, provisions, stores, coal and means of repairing necessary to the subsistence of their crew or the continuation of their navigation.

No pilot can be furnished to these vessels without the authorization of the neutral Government.

[703]

Annex 49

QUESTIONNAIRE ¹

QUESTIONS INVOLVED IN THE PROPOSITIONS MADE BY THE JAPANESE, SPANISH, BRITISH AND RUSSIAN DELEGATIONS ²

GREAT BRITAIN

I. *Is there a general principle controlling the whole subject?*

(2) Every belligerent is bound to respect the sovereign rights of a neutral State and to abstain in neutral territory

¹ This *questionnaire* is the work of a committee composed of the president, the secretary, and the reporter of the second subcommission, as well as representatives of the delegations that made the proposals (decision taken by the subcommission, July 16).

² Annexes 46, 47, 44 and 48. The proposal of the British delegation had a wider scope, since it dealt in a general manner with the rights and duties of neutral States in naval war. Moreover, some articles of that proposal could not be included in the *questionnaire*, which was confined to the express terms of the program. The text of these articles, which may be made use of in relevant matters, follows:

(1) A neutral State is bound to take measures to preserve its neutrality only after it has received from one of the belligerents a notification of the commencement of the war.

(3) A neutral State is forbidden to sell, either directly or indirectly, to a belligerent Power vessels of war, arms, supplies or any other war material belonging to the said State.

(5) A neutral State must likewise prevent so far as possible any acts within the limits of its jurisdiction toward arming or equipping a war-ship or toward the conversion of a merchant vessel into a war-ship by one of the belligerents.

(7) The neutral State is bound to use due diligence to prevent within its territorial waters the construction, arming, or equipping, whether altogether or in part, of any vessel which it has reasonable ground to believe is intended to serve in the navy of a belligerent Power.

(31) A neutral State is not bound to prevent its subjects from violating a blockade established by a belligerent (or from preventing the exportation from its territory of contraband articles) but it must not lend them aid and assistance for that purpose.

or territorial waters from any act which, if it were committed with the express permission of the neutral Government, would constitute a violation of neutrality.

[704]

JAPAN

Preamble. With a view to relieve neutrals of onerous and useless responsibility and at the same time to prevent misunderstandings resulting from differences in practice, the delegation of Japan has the honor to submit to the consideration of the Commission a project defining the status of belligerent ships in neutral waters.

RUSSIA

(1) The conditions of stay of war-ships of belligerent States in neutral ports and waters should be regulated in the first place on the basis of respect for the immutable rights of sovereignty of neutral States.

GREAT BRITAIN

II. *What are the rights of neutral States as regards the entrance of belligerent ships of war into their ports?*

(30) A neutral State has the right to prohibit in whole or in part, if it deems it necessary, access to its ports or territorial waters by war-ships or prizes or even by certain ships or certain classes of ships of a belligerent Power, either for the entire duration of the war or for a fixed period of time.

SPAIN

[705] III. *To what extent should ships of war be prohibited from using neutral ports and territorial waters?*

Place of observation.

Rendezvous.

Passage.

Base of military operations.

Establishment of prize courts.

Military objects of every kind.

ARTICLE 1. War vessels shall not be allowed to enter or sojourn in neutral ports or waters and use them as bases of military operations whatever be the nature of such operations.

GREAT BRITAIN

(2) Every belligerent is bound to respect the sovereign rights of a neutral State and to abstain in neutral territory or territorial waters from any act which, if it were committed with the express permission of the neutral Gov-

ernment, would constitute a violation of neutrality.

(6) A neutral State cannot knowingly permit a war-ship lying within its jurisdiction to take on board officers, men, or guns, or to increase in any degree its strength as a fighting unit.

(8) The neutral State must use due diligence to prevent the departure from its jurisdiction of any vessel flying a merchant flag, which it has reasonable cause to believe is intended to serve in the navy of a belligerent Power.

(9) A neutral State must prevent, so far as possible, a part of its territory or of its territorial waters from being used as a base of operations by a belligerent fleet.

(10) A neutral territory or neutral territorial waters shall be deemed to serve as a base of operations to a belligerent when, for example:

(a) There has been installed on the neutral territory or on board a ship in the neutral waters a wireless telegraph station or any other apparatus intended to maintain communication with the war-ships of the belligerent;

(b) Belligerent vessels revictual in neutral waters by means of auxiliary vessels of their fleet.

(25) No prize court can be instituted upon neutral territory or upon a ship within neutral waters.

(32) None of the provisions contained in the preceding articles shall be interpreted so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent.

[706]

JAPAN

(1) Belligerent ships are forbidden to make use of ports and neutral waters either as places for observation, or for *rendezvous*, or as bases of military operations or acts of any kind with military purposes.

RUSSIA

(2) Any act of hostility is forbidden war-ships belonging to a belligerent State during their stay in neutral ports and territorial waters.

(3) It is likewise forbidden to said vessels to make use of neutral ports and territorial waters as bases of operations of war.

GREAT BRITAIN

IV. *If a prize is taken in neutral waters, what are the rights and duties of the neutral State if the prize is still within its jurisdiction, or if it has left it?*

(28) When a prize has been captured in territorial waters in violation of neutrality, the neutral Power shall, if the prize is still within its jurisdiction, release it, as well as its officers and crew, and intern the crew put on board by the captor; if the prize has left the neutral jurisdiction, the neutral Power shall address a protest to the belligerent Government, asking that the prize be released with its officers and crew and the belligerent Government shall take steps to that end.

SPAIN

V. *Should the period of stay of belligerent ships of war in neutral ports and waters be limited?*

ARTICLE 3. Belligerent vessels cannot stay more than twenty-four hours in neutral ports or waters except by reason of damage, stress of weather, or other *force majeure*.

GREAT BRITAIN

(11) A neutral Power must give notice to every war vessel of a belligerent Power—known to be lying in its harbors or territorial waters at the time of the opening of hostilities—that it is to leave within twenty-four hours.

(12) A neutral Power must not knowingly permit a belligerent ship to stay in its ports or territorial waters for a period longer than twenty-four hours except in the cases provided for in articles of the present Convention.

[707]

JAPAN

(2) Belligerent vessels shall neither enter nor sojourn in neutral ports or

waters more than twenty-four hours except in the following cases:

(a) In case stress of weather prevents the said vessels from putting to sea, the length of legal stay will be extended until the weather ceases being dangerous.

(b) An interval of not more nor less than twenty-four hours should be maintained between the departure from a neutral port or neutral waters of a merchant ship or a war-ship of one belligerent and the departure from the same neutral port or waters of a war-ship of the other belligerent. It is for the neutral State to decide which of the hostile vessels shall leave first.

RUSSIA

(4) It belongs to the neutral State to fix the period of stay to be accorded to war-ships of belligerent States in the ports and territorial waters belonging to that neutral State.

SPAIN

VI. *If the principle of a limitation is admitted, what exceptions should be made?*

Stress of weather.

Repairs.

ARTICLE 3. Belligerent vessels cannot stay more than twenty-four hours in neutral ports or waters except by reason of damage, stress of weather, or other *force majeure*.

ARTICLE 4. In the cases of compulsory putting in the said vessels must leave the neutral ports or waters as soon as their damages are repaired or the circumstances of *force majeure*, which caused their arrival or stay, shall have ended.

JAPAN

(2a) In case stress of weather prevents the said vessels from putting to sea, the length of legal stay will be extended until the weather ceases being dangerous.

RUSSIA

(5) The stay of war-ships of belligerent States in a neutral port may be prolonged if stress of weather, lack

of provisions, or damage prevents the said ships from putting to sea.

GREAT BRITAIN

VII. *What is the position of a belligerent war-ship which has taken refuge in a neutral port to escape pursuit by the enemy?*

(15) When a war vessel of a belligerent takes refuge in neutral waters in order to escape pursuit by the enemy it is incumbent upon the Government of the neutral State to intern it until the end of the war.

GREAT BRITAIN

VIII. *What rule should be applied in case ships of both belligerents are in a neutral port simultaneously?*

How should the order of departure be fixed?

(13) If war vessels or merchant ships of the two belligerent parties are in the same neutral harbor or roadstead at the same time, the neutral Government must not permit a war vessel of one of the belligerents to leave the port or roadstead until twenty-four hours have elapsed since the departure of a war-ship or merchant ship of the other belligerent.

JAPAN

(2b) An interval of not more nor less than twenty-four hours should be maintained between the departure from a neutral port or neutral waters of a merchant ship or a war-ship of one belligerent and the departure from the same neutral port or waters of a war-ship of the other belligerent. It is for the neutral State to decide which of the hostile vessels shall leave first.

RUSSIA

(6) When war-ships and merchant ships of the two belligerent parties are simultaneously in a neutral port there shall be an interval of twenty-four hours between the departure of ships of one of the belligerents and the subsequent departure of ships of the other belligerent.

The priority of request made by the ships of one of the belligerent States may be freely utilized by the other ships of the same belligerent that happen to be in the same port.

[709]

IX. *Is it necessary to distinguish between single ships and groups of ships?*

X. *Is any special rule required for ships accompanied by prizes?*

XI. *Can belligerent war-ships effect repairs in a neutral port?*

JAPAN

(3) More than three belligerent vessels belonging to the same State or its allies cannot anchor at one time in the same neutral port or waters.

SPAIN

ARTICLE 2. Entry and stay in neutral ports and waters are forbidden to vessels bringing prizes except in the case of putting in by reason of *force majeure*.

GREAT BRITAIN

(26) A neutral Power cannot knowingly permit a belligerent to bring a prize into its jurisdiction unless the prize is short of fuel or provisions or is in danger by reason of unseaworthiness or stress of weather. The neutral Power shall not knowingly permit a prize to take on supplies, fuel, or provisions, or to make repairs beyond what is necessary to allow it to reach the nearest port of the belligerent country; the neutral Power must notify the prize that it is to depart as soon as possible after having effected the necessary repairs.

(27) Every belligerent prize brought into neutral waters to escape pursuit by the enemy shall be released with its officers and crew by the neutral Power, but the crew put on board the prize by the captor shall be interned.

(29) When a prize brought into neutral waters does not obey the order to depart communicated to it, if the delay is not occasioned by stress of weather, the neutral Power shall release it with its officers and crew and intern the crew put on board by the captor.

GREAT BRITAIN

(19) A neutral State must not knowingly permit a war-ship of a belligerent to repair within its jurisdiction the injuries resulting from a combat with the

enemy, nor in any case to make repairs in excess of what will be necessary for navigating.

[710]

JAPAN

(4) Belligerent ships cannot in neutral ports or waters increase their war forces nor make repairs other than those indispensable to their safety in sailing, nor take on any supplies other than coal and provisions sufficient, added to what is already on board, to enable them to reach under an economical speed the nearest port of their own country or a neutral destination still nearer.

SPAIN

XII. *What amount of provisions and coal may they take on board?*

ARTICLE 5. Belligerent vessels cannot, during their stay in neutral ports or waters, take on war material nor any supplies of a kind to increase their military force. They may, nevertheless, provide themselves with food and coal necessary to reach the nearest port of their own country or a neutral port that is still nearer.

GREAT BRITAIN

(17) A neutral State must not knowingly permit a war-ship of a belligerent lying in its jurisdiction to take on board supplies, food or fuel except in case the supplies, food or fuel already on board the ship would not be sufficient for it to reach the nearest port of its own country; the quantity of supplies, food or fuel taken on board the ship in the neutral jurisdiction must not in any case exceed the quantity necessary to enable it to reach the nearest port of its own country.

JAPAN

(4) Belligerent ships cannot in neutral ports or waters increase their war forces nor make repairs other than those indispensable to their safety in sailing, nor take on any supplies other

than coal and provisions sufficient, added to what is already on board, to enable them to reach under an economical speed the nearest port of their own country or a neutral destination still nearer.

[711]

RUSSIA

(7) It is forbidden war-ships of belligerent States during their stay in neutral ports and territorial waters to increase their war material, by the aid of resources derived from the land, or to reinforce their crew.

Nevertheless, the vessels above mentioned may provide themselves with food, provisions, stores, coal and means of repairing necessary to the subsistence of their crew or the continuation of their navigation.

No pilot can be furnished to these vessels without the authorization of the neutral Government.

SPAIN

XIII. *Should a second supply be allowed in the same neutral country except after the lapse of some definite period of time?*

ARTICLE 5, PARAGRAPH 2. A belligerent vessel which has taken on supplies in a neutral port cannot do so again in any port of the same neutral country save after the lapse of a period of three months.

GREAT BRITAIN

(18) A neutral Power must not knowingly permit a war-ship of a belligerent lying in its jurisdiction to take on coal if the ship has already within the preceding three months taken on coal in the waters of the said neutral Power.

GREAT BRITAIN

XIV. *Should special provision be made for war-ships proceeding to the seat of war or being in proximity to the zone of hostilities?*

(16) A neutral Power must not knowingly permit a war-ship of a belligerent lying within its jurisdiction to take on board supplies, food, or fuel in order to go to meet the enemy or in order to enter upon operations of war.

JAPAN

(5) Neither belligerent vessels proceeding to the theater of war or sailing in that direction or towards the zone of existing hostilities, nor those whose destination is doubtful or unknown can make repairs or take on coal or supplies in neutral ports or waters.

[712]

XV. How should belligerent war-ships be dealt with for not conforming to the rules as to the duration and conditions of their stay in neutral ports and waters?

GREAT BRITAIN

(14) If for any reason a belligerent war-ship does not leave the harbor or waters of a neutral Power after having received a notice that it must depart, it shall be interned until the end of the war by the neutral Power, except in case it has been detained by reason of stress of weather.

(21) The neutral Power shall have the right to take the measures that it may deem necessary—such, for example, as the removal of some essential parts of the machinery or the armament of the ship—to render the ship incapable of putting to sea during the existence of the war.

(22) When a belligerent ship is interned by a neutral Power the officers and crew shall likewise be interned unless the Government of the other belligerent party consents to their going to their own country.

(23) The officers and crew of a belligerent ship interned by a neutral Power may be lodged on land or on a ship, and may likewise be subjected to the restrictive measures that it may be deemed necessary to impose upon them.

(24) The expense incurred by the neutral Government for the internment of the ship and the support or repatriation of its officers and crew shall be reimbursed by the Government of the country to which the interned vessel belongs.

(29) When a prize brought into neutral waters does not obey the order to depart communicated to it, if the delay is not occasioned by stress of

weather, the neutral Power shall release it with its officers and crew and intern the crew put on board by the captor.

JAPAN

(6) Belligerent ships staying in neutral ports or waters beyond the limit of time allowed by the rules above, and taking on other supplies than those allowed by the said rules or violating in one way or another the limitations or restrictions imposed by the said rules, shall be disarmed and interned for the rest of the war by the neutral Powers to whom such ports or waters belong.

[713]

GREAT BRITAIN

XVI. *What is the duty of neutral States to ensure respect for the rules adopted?*

(4) A neutral State is bound to do its utmost to prevent a belligerent from committing hostile acts within its territorial waters.

JAPAN

(7) Neutral States should take all necessary measures to secure the application of the present provisions.

Annex 50

AMENDMENTS OF THE PORTUGUESE DELEGATION TO THE PROPOSALS OF THE JAPANESE, SPANISH, BRITISH, AND RUSSIAN DELEGATIONS ¹

In Article 30 of the British proposal replace the words "of a belligerent Power" with "of the belligerent Powers."²

Add at the end of Article 2 of the Japanese proposal the following words: "With the view to prevent, so far as possible, a meeting or combat between these vessels."

In Article 15 of the British draft, after the words "of a belligerent," add "in the course of an engagement."

The delegation thinks that Article 4 of the Japanese proposal is responsive to the questions put in Nos. II (last part), VI, XI and XII of the *Questionnaire*.

¹ See annex 49.

² [This change was made in the third meeting, July 27, of the second subcommission of the Third Commission on motion of Sir ERNEST SATOW. *Acte*, p. 591 [587].]

It will be sufficient to add to the words "war forces" these: "nor take on officers or men," and replace the words "other than" (third line) with the following words: "of damages resulting from a combat with the enemy or any others except."

Replace Article 4 of the British proposal and 7 of the Japanese proposal with the following article substantially:

In general the neutral State should prevent by all the means in its power the belligerents from committing in its territorial waters acts which may constitute war assistance for the combating forces.

Annex 51

AMENDMENT OF THE DELEGATION OF NORWAY TO THE QUESTIONNAIRE ¹

Add a new question, thus worded:

XVII. Is it necessary to apply the same rule to territorial waters as to neutral ports?

[714]

Annex 52

PROPOSITION OF THE DELEGATION OF BRAZIL

Insert in the Draft Convention ² the following article:

War-ships in course of construction in the shipyards of a neutral country may be delivered with all their armament to the officers and crews appointed to receive them, when they have been ordered more than six months before the declaration of war.

Annex 53

ARTICLES PRESENTED TO THE COMMITTEE OF EXAMINATION ³

Duration of stay in case of voluntary sojourn

ARTICLE (11)

In the absence of special provisions to the contrary in the law of a neutral State, belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State for a period of more than twenty-four hours except in the cases covered in the articles of the present Convention.

¹ Annex 49.

² Annex 55.

³ See the Draft Convention, *ibid.*

Notice to leave

ARTICLE (12)

If it is within the knowledge of a neutral Power that at the moment of the outbreak of hostilities a belligerent war-ship is in one of its ports or in its territorial waters, this Power must notify the said ship to depart within twenty-four hours, or within the time prescribed by local regulations.

Interval between departures

ARTICLE (15)

When war-ships or merchant ships belonging to both belligerents are present together in a neutral port or roadstead, an interval of at least twenty-four hours must elapse between the departure of any one of the ships belonging to one of the belligerents and the departure of one of the ships belonging to the other belligerent.

This interval may be increased according to circumstances by the maritime authority of the place with a view to prevent, so far as possible, a meeting or combat between these vessels.

It is for the neutral State to decide which of the hostile vessels shall leave first, taking into account priority of request and the date of arrival.

[715]

Notice to be given to the belligerent ship before its entrance into the port

ARTICLE (15)

If a belligerent ship wishes to enter a neutral port or roadstead where a war-ship of the other belligerent State is already present, the local authorities should warn it of the presence of the hostile ship.

Extension of the legal stay

ARTICLE (13)

No belligerent war-ship may prolong its legal stay in the ports and roadsteads or in the territorial waters of a neutral State except in case of enforced sojourn on account of bad weather, damage, or lack of provisions necessary for its security at sea.

The said ship must quit the port, roadstead, or waters as soon as the cause of its arrival or its stay shall have ceased.

Repair of damage

ARTICLE (16)

In neutral ports, roadsteads, and territorial waters belligerent ships may only carry out such repairs as are absolutely necessary to render them seaworthy.

They may not, under pretext of repairs, perform work calculated to add in any manner whatever to their fighting force.

Annex 54

ARTICLES PRESENTED TO THE COMMITTEE OF EXAMINATION¹*Acts of hostility*

ARTICLE (1)

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral State, constitutes a violation of neutrality and is strictly forbidden.

Prizes captured in neutral territorial waters

ARTICLE (2)

When a ship has been captured in the territorial waters of a neutral State, this State must take the necessary measures, if the prize is still within its jurisdiction, to release the prize with its officers and crew, and to intern the prize crew. If the prize is not in the jurisdiction of the neutral State, the latter will address the belligerent Government, which must liberate the prize with its officers and crew.

[716]

Prize courts in neutral territory

ARTICLE (3)

A prize court cannot be set up on neutral territory or on a vessel in neutral waters.

Refusal of a prize to depart

ARTICLE (20)

When a prize brought into a neutral port does not obey the order to depart, which is addressed to it and if the delay is not caused by stress of weather, the neutral Power must release it with its officers and crew and intern the prize crew.

Supply of war materials by a neutral State

ARTICLE 5

The supply, in any manner, directly or indirectly, by a neutral State to a belligerent Power, of war-ships, ammunition or war material of any kind whatever is forbidden.

Responsibility of the neutral State for the conduct of its subjects

ARTICLE (6)

A neutral State is not bound to prevent the export of arms or munitions to a belligerent destination.

Access of belligerent war-ships to neutral ports, roadsteads and waters

ARTICLE (8)

A neutral State may permit under determined conditions and even forbid, if it deems it necessary, belligerent war-ships or prizes to enter its ports or certain of its ports.

¹ See the Draft Convention, annex 55.

The conditions, restrictions or prohibitions must be applied impartially to the two belligerents.

A neutral State may forbid any belligerent ship which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.

Annex 55

FIRST DRAFT OF CONVENTION ¹

(After the heading)

With a view to preventing the misunderstandings resulting from the uncertainty and instability of laws as well as from the application of divergent practices and usages, and in order to relieve neutral Powers from heavy and insupportable responsibilities;

Seeing that, even if it is impossible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame rules of general application tending to give the respective national legislations the necessary stability, especially during the period of hostilities, to meet the case where war has unfortunately broken out between some of the signatory Powers, and further that it could not enter into the contemplation of the Powers that the cases not provided for in this Convention should, for the want of a written stipulation, be left to the arbitrary determination of those who direct military or naval forces;

The high contracting Parties express the desire that in the exercise of their legislative independence reciprocally and formally recognized, the Powers will establish by national law the public rules of neutrality that they shall have declared.

They recognize that the impartial application of this law to all the belligerent parties is the very principle of neutrality and that from this principle falls the reciprocal inhibition of changing or modifying their legislation on this subject while war exists between two or more of them, except in the case where experience might demonstrate the necessity of adopting measures more rigorous in order to safeguard the rights of neutrals.

They declare that belligerents are bound to respect the sovereign rights of neutral States and to refrain, within the territory or waters of neutrals, from every act which, if it were accomplished with the express permission of the neutral Government, would constitute a violation of neutrality.

To this end the high contracting Parties have agreed to observe the following common rules, to wit:

ARTICLE 1

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral State, constitutes a violation of neutrality and is strictly forbidden.

ARTICLE 2

When a ship has been captured in the territorial waters of a neutral State, this State must take the necessary measures, if the prize is still within its juris-

¹ See Annexes 63 and 65.

diction, to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral State, the latter will address the belligerent Government, which must liberate the prize with its officers and crew.

ARTICLE 3

A prize court cannot be set up on neutral territory or on a vessel in neutral waters.

ARTICLE 4

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy apparatus or any other means of communication.

ARTICLE 5

The supply, in any manner, directly or indirectly, by a neutral State to a belligerent Power, of war-ships, ammunition or war material of any kind whatever is forbidden.

[718]

ARTICLE 6

A neutral State is not bound to prevent the export of arms or munitions to a belligerent destination.

ARTICLE 7

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming within its jurisdiction of any vessel which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, the vessel having been adapted entirely or partly within the said jurisdiction for use in war.

ARTICLE 8

A neutral State may permit under determined conditions and even forbid, if it deems it necessary, belligerent war-ships or prizes to enter its ports or certain of its ports.

The conditions, restrictions or prohibitions must be applied impartially to the two belligerents.

A neutral State may forbid any belligerent ship which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.

ARTICLE 9

A neutral State may not forbid the mere passage through its territorial waters by war-ships belonging to belligerents.

ARTICLE 10

The war vessels of belligerents may employ the pilots authorized by the neutral Government.

ARTICLE 11

In the absence of special provisions to the contrary in the law of a neutral State, belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State (situated in the immediate proximity of the theater of war) for more than twenty-four hours, except in the cases covered by the present Convention.

The rules on the duration of the stay of the ships of belligerents in the ports and territorial waters are not applicable to those which are there present solely for the protection of their nationals.

ARTICLE 12

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports, or in its territorial waters (situated in the immediate proximity of the theater of war), it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

ARTICLE 13

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

[719] The regulations as to the question of the length of time which these vessels may remain in neutral ports or waters do not apply to ships devoted exclusively to scientific or charitable purposes.

ARTICLE 14

The neutral State must fix in advance the maximum number of war-ships belonging to a belligerent which may be in one of the ports of that State simultaneously. In the absence of such determination this number shall be three.

ARTICLE 15

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

If a belligerent war-ship is preparing to enter a neutral port or roadstead where a war-ship of its adversary is present, the local authorities should so far as possible notify it of the presence of the hostile ship.

ARTICLE 16

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary and these must be carried out with the least possible delay.

ARTICLE 17

Belligerent war-ships may not make use of neutral ports for replenishing or increasing their supplies of war material or their armament or for completing their crews.

ARTICLE 18

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard; revictualing gives no right to an extension of the lawful length of stay.

The vessels likewise may only ship fuel to bring up their load to the peace standard. They shall not receive it within twenty-four hours of their arrival. In this case, the lawful length of their stay is extended by twenty-four hours.

ARTICLE 19

Belligerent war-ships which have shipped fuel in a neutral port may not within the succeeding three months replenish their supply in the same neutral territory.

ARTICLE 20

A prize may only be brought into a neutral port on account of unseaworthiness or stress of weather.

[720] It must leave as soon as the circumstances which justify its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must release it with its officers and crew and intern the prize crew.

ARTICLE 21

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 20.

ARTICLE 22

Entrance into neutral ports is permitted to prizes whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court.

If the prize is convoyed by a war-ship, the prize crew may go on board the conveying ship.

If the prize is not under convoy, the prize crew are left at liberty.

ARTICLE 23

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port within the time fixed by Articles 11 and 18, the neutral Power takes the necessary measures so that the ship cannot take the sea and the commanding officer of the ship must facilitate the execution of such measures.

ARTICLE 24

A neutral Government is bound to exercise all necessary diligence in its own ports and waters and with regard to every person within its jurisdiction to prevent any violation of the preceding provisions.

ARTICLE 25

The exercise by a neutral State of the rights laid down in this agreement within the limits there indicated can under no circumstances be considered by one or other belligerent as an unfriendly act.

Annex 56AMENDMENT OF THE DELEGATION OF GREAT BRITAIN TO THE
FIRST DRAFT CONVENTION ¹

ARTICLE 8

A neutral State may forbid, if it deems it necessary, all access to its ports or certain of its ports, or passage through its territorial waters, to belligerent war-ships or prizes.

The conditions, restrictions, or prohibitions shall apply impartially to both belligerents.

[721] A State may forbid any belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or territorial waters.

ARTICLE 9

The neutrality of a neutral State is not involved by the mere passage through its territorial waters by belligerent war-ships.

Annex 57AMENDMENT OF THE DELEGATION OF NORWAY TO THE FIRST
DRAFT CONVENTION ¹

Add:

However, this provision does not hinder the neutral State from barring even against mere passage certain limited and specially indicated parts of its territorial waters, if the interests of the national defense or the maintenance of its neutrality demands it.

¹ Annex 55.

Annex 58**AMENDMENT OF THE DELEGATION OF JAPAN TO THE FIRST DRAFT CONVENTION¹**

Add to the end of the draft the following article:

A neutral State, if it deems it necessary for the better safeguarding of its neutrality, is free to maintain or establish stricter rules than those provided by the present Convention.

[722]

Annex 59**AMENDMENT OF THE DELEGATION OF GREAT BRITAIN TO THE FIRST DRAFT CONVENTION¹****ARTICLE 23**

Substitute for the words: "the neutral Power takes the necessary measures so that the ship cannot take the sea and the commanding officer of the ship must facilitate the execution of such measures."

the following provisions:

. . . the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war. . . .

When a belligerent ship is interned by a neutral Power, the officers and crew are likewise interned, unless the Government of the other belligerent party consents to their repatriation.

The officers and crew of a belligerent ship interned by a neutral Power may be lodged on land or on a vessel and may also be subjected to the restrictive measures which it may appear necessary to impose upon them.

Annex 60**DECLARATIONS AND AMENDMENT OF THE DELEGATION OF THE UNITED STATES OF AMERICA APROPOS OF THE FIRST DRAFT CONVENTION¹****ARTICLE 8**

The delegate of the United States cannot accept Article 8 of the draft of the committee of examination for the reason that a State, being sovereign in its own jurisdiction, that which it does for the safeguard of its neutrality is done by virtue of its own right.

¹ Annex 55.

ARTICLE 9

The delegate of the United States cannot accept Article 9 of the draft of the committee by reason of the political considerations involved in the question of the passage through territorial waters.

In the meeting of September 3 the committee decided to substitute for Article 9 of the draft of the president Article 8 *a* of the *British amendment*, which may be revised as follows:

The neutrality of a State is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

[723]

Annex 61**AMENDMENT OF THE DELEGATION OF JAPAN TO THE FIRST
DRAFT CONVENTION ¹****ARTICLE 8**

Omit the first paragraph.

The conditions, restrictions or prohibitions under which belligerent war-ships and prizes may be admitted into the ports, roadsteads or territorial waters of a neutral State, must be applied impartially to the two belligerents.

However, a neutral State (the rest as in the draft).

Annex 62**AMENDMENT OF THE DELEGATION OF RUSSIA TO THE FIRST
DRAFT CONVENTION ¹****ARTICLE 8**

Omit the first paragraph.

The neutral State which deems it necessary to impose conditions, restrictions or prohibitions concerning access to its ports, roadsteads or territorial waters upon the war-ships and prizes of belligerents, must apply these conditions, restrictions or prohibitions impartially to the two belligerents.

However, the neutral State (the rest as in the draft).

¹ Annex 55.

Annex 63**SECOND DRAFT CONVENTION PREPARED BY THE COMMITTEE OF EXAMINATION¹**

With a view to harmonizing the divergent views which are still held on the relations between neutral Powers and belligerent Powers, and to anticipating the difficulties to which such divergence of views might give rise;

Seeing that, even if it is not possible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame, as far as possible, rules of general application to meet the case where war has unfortunately broken out between some of the signatory Powers;

Seeing that, in cases not covered, it is expedient to take into consideration the general principles of the law of nations;

[724] Seeing that it is desirable that the Powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them;

Seeing that it is, for neutral Powers, an admitted duty to apply these rules impartially to the several belligerents;

Seeing that, in this category of ideas, the rules should not, in principle, be altered in the course of the war, except in a case where experience has shown the necessity for prescribing stricter measures for the protection of neutral rights;

To this end the high contracting Parties have agreed to observe the following common rules, which cannot however modify provisions laid down in existing general treaties, to wit:

ARTICLE 1

Belligerents are bound to respect the sovereign rights of neutral States and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any State, constitute a violation of neutrality.

ARTICLE 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral State, constitutes a violation of neutrality and is strictly forbidden.

ARTICLE 3

When a ship has been captured in the territorial waters of a neutral State, this State must take the necessary measures, if the prize is still within its jurisdiction, to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral State, the latter addresses the belligerent Government, which must liberate the prize with its officers and crew.

ARTICLE 4

A prize court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

¹ See Annexes 55 and 65.

ARTICLE 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any other apparatus for the purpose of communicating with the belligerent forces on land or sea.

ARTICLE 6

The supply, in any manner, directly or indirectly, by a neutral State to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

[725]

ARTICLE 7

A neutral State is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

ARTICLE 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming within its jurisdiction of any vessel which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, this vessel having been adapted entirely or partly within the said jurisdiction for use in war.

ARTICLE 9

A neutral State must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral State may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.

ARTICLE 10

The neutrality of a State is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

ARTICLE 11

A neutral State may allow belligerent war-ships to employ its licensed pilots.

ARTICLE 12

In the absence of special provisions to the contrary in the law of a neutral State, belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State (situated in the immediate proximity of the theater of war) for more than twenty-four hours, except in the cases covered by the present Convention.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports, or in its territorial waters (situ-

ated in immediate proximity to the theater of war), it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

ARTICLE 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

[726] The regulations as to the question of the length of time which these vessels may remain in neutral ports, or waters, do not apply to war-ships devoted exclusively to scientific, religious, or charitable purposes.

ARTICLE 15

The neutral State must fix in advance the maximum number of war-ships belonging to a belligerent which may be in one of the ports of that State simultaneously. In the absence of such determination this number shall be three.

ARTICLE 16

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

ARTICLE 17

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

ARTICLE 18

Belligerent war-ships may not make use of neutral ports, or roadsteads, for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

ARTICLE 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard; revictualing gives no right to an extension of the lawful length of stay.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country.		These vessels likewise may only ship fuel to bring up their load to the peace standard.
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If in accordance with the law of the neutral State they are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

ARTICLE 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral State may not within the succeeding . . . months replenish their supply in a port of the same State less than . . . miles distant.

[727]

ARTICLE 21

A prize may only be brought into a neutral port on account of unseaworthiness, or stress of weather.

It must leave as soon as the circumstances which justify its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

ARTICLE 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

ARTICLE 23

The neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

ARTICLE 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port within the time fixed, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained, unless the Government of the other belligerent party consents to their repatriation.

The officers and crew of a belligerent ship detained by a neutral Power may be left in the ship or kept either on another vessel or on land, and they may be subjected to the measures of restriction which it may appear necessary to impose upon them.

ARTICLE 25

A neutral Government is bound to exercise all necessary diligence in its own ports and waters, and with regard to every person within its jurisdiction, to prevent any violation of the above-mentioned obligations and duties.

ARTICLE 26

If it deems it necessary in order better to safeguard its neutrality a neutral State is free to maintain or establish stricter provisions than those which are laid down by the present Convention.

ARTICLE 27

The exercise by a neutral State of the rights laid down in this agreement within the limits there indicated can under no circumstances be considered by one or other belligerent as an unfriendly act.

[728]

Annex 64

AMENDMENT OF THE GERMAN DELEGATION TO THE SECOND DRAFT CONVENTION¹*Statement of reasons*

The German delegation proposes to insert the words "situated in the immediate proximity of the theater of war" after the word "State" in Article 12 and after "territorial waters" in Article 13. The reasons that have led it to make this proposal are as follows:

There are two schools or rather two practices relative to the length of stay that neutral States may accord belligerent ships in their ports and waters. One restricts the stay to twenty-four hours everywhere except in special cases, the other does not restrict the stay and limits itself to prohibiting vessels from everything that might be considered as an act violative of neutrality. It is not necessary to the argument to cite the countries that apply these different theories, it is sufficient to state that these two schools exist.

Now, the former, a very strict one, imposes a heavy responsibility upon neutrals, because it obliges them to guard all their ports and roadsteads in an effective manner so as to cause their sovereignty to be respected and to avoid every complaint on the part of belligerents. The latter school, a very liberal one, does not place the neutral under the necessity of watching all his anchorages unless to prevent the belligerents from making use of them as bases of operations. By reason of these two opposed principles the German delegation has tried to find an intermediate solution that can be accepted by all interested. To this end it has presented a proposal which, however, has not obtained a majority in the committee of examination, and which it has the honor to lay before you in order that it may be submitted to the full Commission in the hope that it may receive its high approval. The principle of this proposal is in brief as follows:

We propose to apply a different system in the regions that we would like to call the "theater of war" than in the rest of the world. In proximity with the "theater of war" an international regulation would fix the length of stay of belligerent ships in neutral ports and roadsteads. In regions not having this character the neutral State would itself regulate the sojourn of vessels according to its own decision and in virtue of its sovereignty. To avoid all mistake I hasten to add that the expression "theater of war" is here employed in a *special sense*, and that any other expression, as field of activity of the hostilities, field of action of the belligerents, etc., would suffice, provided that the dominant idea be accepted that that sea area would be considered as the "theater of war" upon

¹ Annex 63.

which an operation of war is taking place or has just taken place, or upon which such an operation can take place in consequence of the presence or the approach of the armed forces of *both* belligerents. Thus, the presence or the approach of *both* adversaries who are relatively near each other is necessary in order that we may speak of the theater of war. The case where a single cruiser would exercise the right of capture or of search, or the case where a naval force of only one of the belligerents might be proceeding does not enter into our plan.

[729] A navy must be very powerful in order to control all its coasts; it is certain that most States are not in a position to do this. There are some countries whose coasts are of great extent and sown with islands and islets; there are other countries that have vast colonial possessions with numerous roadsteads and anchorages. It is practically impossible, especially for Powers whose navies are small, to watch over all these regions where there may perhaps exist no establishment or no dwelling. Now, without a certain control, without any surveillance whatever, an international regulation would rest a dead letter; it is easily seen that this state of things could not help but cause complications.

On the other hand, every State is in a position to keep a watch over some regions, some parts of its coasts in an efficacious manner. It can likewise control its waters near that part of the sea that is used as a field of battle for naval forces and squadrons, an area that is always relatively small. Here it is that the fate of fleets will be decided, and especial vigilance will be exercised.

It is objected that it is impossible to define exactly the limits of the theater of war and that this definition cannot be left to the neutral. And also that it is to be feared that two neutrals may have different opinions as to what the theater of war is and that complications will result, and complaints and even serious dangers. But it does not seem to be very difficult to decide where the theater of war is. If, for example, we take the war between the United States and Spain in 1898, it is clear that the theaters of war were in the regions of the Philippines and the West Indies and not at all in the Mediterranean nor in the eastern part of the Atlantic Ocean.

So there is no reason to fear that difficulties would arise in practice. In our day, with its multiplied means of communication, neutrals will always know the places where naval forces are stationed. They will be in a position to determine whether these naval forces are preparing to approach their coasts, and they will declare such regions "the theater of war" and take the necessary steps to learn whether either of the belligerents is visiting their ports.

The neutral State can then take the necessary measures to cause the visitor to leave the port within twenty-four hours. As the neutral is the sole judge of this question, because it is he and not the belligerent who determines what is to be considered the theater of war, there is no danger of dispute.

Germany followed this rule in the war in the Far East, and experience has shown that it answered the necessity of the situation. Moreover, it is scarcely to be feared that two neutrals whose territories are near each other will have such different opinions on which constitutes the theater of war as to result in complications. In general, every neutral will take the greatest care to protect himself against every complaint, and it will be rather too strict than too complaisant.

This proposed international rule is then a strict one for the theater of war, but for regions outside of that theater it is evident that such a rule would not be necessary. In regions where a meeting between belligerents is not to be feared or where the forces of a *single one* of the adversaries are present, national or local legislation will suffice. If the neutral sees that a cruiser is stationed in the neighborhood of its coasts and is desirous of making use of its ports as a base of operations, it will always possess the possibility and the right to forbid it access to its anchorages. Nothing in the proposition tends to permit a belligerent vessel to misuse the ports of a neutral State. The object aimed at is that outside of the theater of war the *neutral* itself decides what it may grant.

[730] By accepting the proposal, neutrals would be disembarrassed of a responsibility that would weigh upon them if they accepted the strict rule of twenty-four hours. For they would not be obliged to guard their entire littoral, which would for many of them be also impossible. When the locality of the naval action is in the Indian Ocean, it is not necessary for Powers in the north of Europe to watch over their ports and roadsteads. In case the theater of war should be in the Mediterranean, the coasts of the two Americas would not need strict control. Moreover, neutral States are evidently free to make such enactments as seem good to them. In the absence of special provisions in the legislation of a neutral Power, the length of stay, outside the theater of war, would not be limited, provided that the belligerent respects the hospitality and conforms to the ordinary conditions of neutrality.

To sum up, the proposal consists in this:

1. We propose an *international* regulation for the stay of belligerent ships in the sea area that we have called the theater of war;

2. We propose that the stay of belligerent ships outside of the theater of war be governed by *national* or *local law*.

It is stated in the following amendment.

ARTICLE 12

Belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State, situated in the immediate proximity of the theater of war, for more than twenty-four hours, except in the cases covered by the present Convention.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or in its territorial waters situated in the immediate proximity of the theater of war, it must notify the said ship that it is to depart within twenty-four hours.

ARTICLE 13 *bis*

In the absence of special provisions to the contrary in the law of the neutral State, the stay of belligerent war-ships in the ports and roadsteads outside of the theater of war is not limited. Nevertheless, the belligerent is bound to conform to the ordinary conditions of neutrality and to the requirements that the neutral State deems necessary. Moreover, it is bound to depart if the neutral State so orders.

[731]

Annex 65**DRAFT CONVENTION PRESENTED TO THE COMMISSION¹**

With a view to harmonizing the divergent views which are still held on the relations between neutral Powers and belligerent Powers, and to anticipating the difficulties to which such divergence of views might give rise;

Seeing that, even if it is not possible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame, as far as possible, rules of general application to meet the case where war has unfortunately broken out;

Seeing that, in cases not covered by the present Convention, it is expedient to take into consideration the general principles of the law of nations;

Seeing that it is desirable that the Powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them;

Seeing that it is, for neutral Powers, an admitted duty to apply these rules impartially to the several belligerents;

Seeing that, in this category of ideas, these rules should not, in principle, be altered, in the course of the war, by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power;

The high contracting Parties have agreed to observe the following common rules, which cannot, however, modify provisions laid down in existing general treaties, to wit:

ARTICLE 1

Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

ARTICLE 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

ARTICLE 3

When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, on the demand of that Power, the captor Government must liberate the prize with its officers and crew.

[732]

ARTICLE 4

A prize court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

¹ See annexes 55 and 63.

ARTICLE 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

ARTICLE 6

The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

ARTICLE 7

A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

ARTICLE 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, this vessel having been adapted entirely or partly within the said jurisdiction for use in war.

ARTICLE 9

A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.

ARTICLE 10

The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

ARTICLE 11

A neutral Power may allow belligerent war-ships to employ its licensed pilots.

ARTICLE 12

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the [733] ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial

waters, it must notify the said ship that it will have to depart within twenty-four hours or within the time prescribed by local regulations.

ARTICLE 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to scientific, religious, or charitable purposes.

ARTICLE 15

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

ARTICLE 16

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

ARTICLE 17

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

ARTICLE 18

Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament or for completing their crews.

ARTICLE 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

[734] Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

The revictualing and shipping of fuel do not give the right to prolong the

lawful length of stay. However, if, in accordance with the law of the neutral State, the ships are not supplied with coal within twenty-four hours of their arrival, this period is extended by twenty-four hours.

ARTICLE 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

ARTICLE 21

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justify its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

ARTICLE 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

ARTICLE 23

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

ARTICLE 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

[735] The officers may be left at liberty, on giving their word not to quit the neutral territory without permission.

ARTICLE 25

A neutral Government is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above articles occurring in its ports or roadsteads or in its waters.

ARTICLE 26

The exercise by a neutral Power of the rights laid down in this Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the articles relating thereto.

ARTICLE 27

The high contracting parties shall communicate to each other in due course all laws, proclamations, and other enactments regulating in their respective countries the status of belligerent war-ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other contracting parties.

FOURTH COMMISSION

FIRST MEETING

JUNE 24, 1907

His Excellency Mr. Martens presiding.

The meeting is opened at 2:45 o'clock.

His Excellency Mr. Martens takes the chair and delivers the following address:

GENTLEMEN: It is a very agreeable duty for me to express my sincere thanks at having been designated by the Conference to preside over the Fourth Commission. I regard this honor as a tribute to my country. My efforts will be directed toward a single object—that of facilitating the task of our Commission and of attaining the lofty goal toward which we are striving.

After the eloquent addresses which we have heard in the other Commissions, it would be presumptuous on my part to add anything further. Permit me, however, to speak a few words on the task which we have to undertake. The important questions raised by war at sea have long occupied the attention of governments, but they have not yet been completely solved. CATHERINE II in her declaration of armed neutrality of February 20, 1780, was the first to lay down the basis of the rights and obligations of neutrals on the seas and to define the principles which were adopted and developed by the Declaration of Paris of 1856. But only a few points were covered. Our present task is much broader in scope; we must examine all the questions on our program relating to naval war, questions which are of the utmost importance, and we must lay down the principles upon which the powers of the whole world are agreed. We must now do for naval warfare what the Second Commission of the last Peace Conference did for land warfare: we must establish the principles which shall aim to prevent disputes and difficulties. The Conference has but a single desire—that the Fourth Commission keep in mind the future and the goal that has been set before it. As for myself, if you will permit me to express a personal wish, I should like to see the Commission take up its work in the same spirit as that which animated the First Peace Conference. But what is that spirit? With the help of Montesquieu we can define it: it is the principle which causes us to act, the dominant idea which causes us to go forward in a given direction. We shall discover this spirit by recalling the memory of those statesmen who were present in 1899, but who are to-day either dead or absent. We shall not mention those among us who took part in the First Conference; I could not touch upon their merits without embarrassing their modesty.

I shall speak of those who took part in our meetings in 1899 and with whom we worked. Their memory should be dear to us and guide us in our task. I shall recall to your minds first of all the President of the 1899 Conference, Mr. STAAL. I, who worked beside him every day, can tell you that in the beginning he was very skeptical of the outcome of the Conference; but as our work progressed and the horizon grew clearer from day to day, he became an enthusiast and in the end a convinced partisan of the task begun upon the hospitable soil of Holland. I saw him a few months before his death, and in expressing to me his regret at not being able to come to The Hague, he told me that the most glorious days of his life were those that he spent here at the 1899 Conference.

Sir JULIAN PAUNCEFOTE, who was for twenty years at the head of the Foreign Office and long represented his country in the United States of America, was a statesman in the full meaning of the term. He was clear-headed and broad-minded. When I made his acquaintance, I was filled with admiration at the well-nigh youthful vigor with which he set forth his ideas on arbitration, as well as on the rules and customs of war on land. On the conclusion of the labors of the Conference he wrote me from Washington that he would never forget the days spent at The Hague and that he was absolutely convinced that the Conference had been working, not only in behalf of the nations therein represented, but for the good of all mankind.

Among our military colleagues of those days, with whom I had frequently to cooperate, I must mention Sir JOHN ARDAGH and the very distinguished German Colonel GROSS VON SCHWARZHOFF, who unfortunately lost his life in China. We often held opposite views, but where people are equally animated by good-will and the spirit of conciliation, they are certain always to return to a common ground of agreement.

I pass with affectionate memory to the DUKE DE TETUÁN, an eminent Spanish statesman, with whom I became acquainted at the Brussels Conference of 1874. I met him again in 1899 and discovered that his ideas had undergone a great change since 1874. Here in 1899 he was a convinced partisan of the task upon which we were engaged—the codification of the laws of war. He felt that there should be a law, even after the sword had been drawn.

I do not want to try your patience. I must, however, recall Count NIGRA, who was admired by everyone. He was always ready to endeavor to find a middle ground of compromise and in this respect he rendered us the greatest service. In conclusion, let me recall Mr. ANDREW WHITE, Dean of American diplomats. You have probably read his Memoirs and learned from them that he left The Hague filled with the brightest hopes as to the results of the Conference.

When I consider all these statesmen, who in the name of twenty-six governments strove toward a common goal, I try to explain to myself this concrete and highly interesting fact. All these statesmen, diplomats, and soldiers were neither mere savants inexperienced in the practical side of life, nor professors with a passion for theories, nor idle dreamers. All these men met here at the First Hague Conference with the single desire, not of playing politics, but of accomplishing a task for the benefit of human culture and civilization. All were inspired by the dominant idea that they were working for the future; that they were laying the first stones of the foundation of an

immense edifice, over whose portal the nations would inscribe Order, Law, and Justice!

Then, gentlemen, I ask myself how can this really extraordinary fact be explained? How has this metamorphosis come about? How can we explain the fact that statesmen and soldiers such as those whom I have mentioned were able to meet here at the First Conference, with one and the same enthusiastic purpose: to organize international relations and to ensure a better future to the nations?

Permit me, gentlemen and honored colleagues, to tell you the explanation which my imagination has suggested, but which my reason has approved and my heart fully ratified.

The great Apostle of Christ relates that when he visited Athens, he found the Athenian men and women bringing offerings to an altar sacred to the Unknown God, whom they were praying to relieve their misery. Methinks that in that "Huis ten Bosch," in that chamber filled with magnificent paintings, there also stood an altar, above which I did not read the inscription stating that it was sacred to the "Unknown God." No; I saw emblazoned the inscription that that altar was sacred to the "God of Right, of Justice, and of Peace." This God of Right, of Justice, and of Peace was not an "Unknown God" to the members of the First Conference. No; he possessed their souls and was rooted in their hearts. The labors of the Conference have convinced me of this. Allow me to say to you: Here is the spirit of the First Conference, which was inspired by the God of Right, of Justice, and of Peace, and upon this altar of the "Huis ten Bosch" the delegates of all the nations have laid their prepossessions, which might have altered their personal relations, and the political combinations and prejudices, if they had any, which might have hindered the progress of their work. The Fourth Commission will keep this altar in sight and will draw its inspiration from right, justice, and peace, and when we shall have reached our declining years, we shall be able to say with Mr. STAAL that the best days of our life were those which we spent at The Hague. (*Applause.*)

The President then makes known the membership of the Bureau:

Honorary Presidents: His Excellency Mr. DE VILLA URRUTIA.

His Excellency Mr. KEIROKU TSUDZUKI.

President: His Excellency Mr. MARTENS.

Vice Presidents: His Excellency Sir ERNEST SATOW.

Mr. HEINRICH LAMMASCH.

His Excellency Mr. M. S. HAGERUP.

Secretaries: Messrs. P. DELVINCOURT, of France, Secretary of Embassy, First Class.

C. CROMMELIN, of the Netherlands, Secretary of Legation, First Class.

BARON NOLDE, of Russia, *Gérant d'Affaires* in the Ministry of Foreign Affairs.

N. THEOTOKY, of Greece, Secretary of Legation.

F. DONKER CURTIUS, Assistant Secretary.

ELLERY CORY STOWELL, Secretary of the Delegation of Panama.

The PRESIDENT proposes that Mr. FROMAGEOT be placed at the head of the Secretariat of the Fourth Commission, an office for which he is peculiarly qualified by his learning and ability. He will fill this office as a colleague of the members of the Commission. (*Assent.*)

[742] The PRESIDENT proposes that the appointment of the reporter be postponed to a later date, when the Commission shall have given its work a definite direction.

The PRESIDENT asks whether the delegates have any proposals to submit concerning the work of the Commission.

His Excellency Lord REAY makes the following statement:

In order to diminish the difficulties encountered by neutral commerce in time of war, the Government of His Britannic Majesty is ready to abandon the principle of contraband in case of war between the Powers which may sign a convention to this effect. The right of search would be exercised only for the purpose of ascertaining the neutral character of the merchant ship.

The President makes record of this statement, which will be printed and distributed.¹

Speaking of the organization of the work, the PRESIDENT hesitates to recommend an immediate division of the Commission into subcommissions. It is not difficult to subdivide the program of the Fourth Commission, but it will be necessary to know in advance what direction the Commission will give to the different questions which have been submitted to it. The discussion of the program must take place in plenary session; but this discussion must necessarily have its limitations and must not give rise to any misunderstanding. The PRESIDENT therefore proposes a *questionnaire*,² comprising fourteen questions, to which he suggests no reply. These questions will be discussed in a plenary session of the Commission, where everyone will have an opportunity to express his opinion. Then will be the time to consider whether it is advisable to form subcommissions or a committee of examination to prepare a draft to serve as a basis for the elaboration of a definitive text.

The method of work proposed by the PRESIDENT meets with no objection on the part of the Commission and is adopted. The PRESIDENT therefore proposes that the discussion of the question be postponed to the next meeting.

His Excellency Mr. LÉON BOURGEOIS proposes that the *questionnaire* be examined and asks that he be permitted to add some other questions.

His Excellency Sir EDWARD FRY seconds the request of his Excellency Mr. LÉON BOURGEOIS.

The President acquiesces in this request, remarking that the questions proposed shall be inserted in the Commission's program.

His Excellency Sir ERNEST SATOW makes the two following declarations:

1. In order to facilitate the work of the Commission in the matter of the conversion of merchant ships into war-ships, appearing in the first paragraph of the Fourth Commission's program of work, I shall have the honor to submit, in the name of the British delegation, certain proposals which have for their object the formulation of a precise definition of a war-ship.³

2. Destruction of a neutral prize by the captor is prohibited. The captor

¹ Annex 27.

² Annex 1.

³ Annex 2.

must release all neutral vessels that he is unable to bring before a prize court.¹
The President makes record of these declarations, which will be printed and distributed.

His Excellency Mr. Choate reads the following proposal:

The private property of all citizens of the signatory Powers, with the [743] exception of contraband of war, shall be exempt from capture or seizure at sea by the armed vessels or military forces of the said Powers. However, this provision in no way implies the inviolability of vessels which may attempt to enter a port blockaded by the naval forces of the above-mentioned Powers, nor of the cargoes of the said vessels.²

The President makes record of this proposal, which will be printed and distributed.

His Excellency Mr. Ruy Barbosa expresses his approval of the system proposed by the President with regard to the method of procedure. He points out, however, that in order to avoid confusion in the discussions, it might be advisable to divide the questions by meetings, so that they may be studied by the Commission in regular order. Each meeting should have its program drawn up in advance, and the program should include a certain group of questions.

The President states that his intention is in all respects in conformity with the remarks of His Excellency the first delegate of Brazil. It is understood that the questions will be submitted to the Commission for examination in the order of the *questionnaire*, unless the discussion should lead to a modification thereof. He therefore proposes that the next meeting be devoted to an examination of the first questions of the *questionnaire*.

The meeting adjourns at 3:25 o'clock.

¹ Annex 39.

² Annex 10.

[744]

SECOND MEETING

JUNE 28, 1907

His Excellency Mr. Martens presiding.

The meeting is opened at 2:40 o'clock.

The President asks whether the Commission has any remarks to make on the minutes of the preceding meeting.

The minutes are adopted.

The President is happy to note the presence of the Honorable President of the Conference, who has come to take part in the deliberations of the Commission.

He recalls that according to the minutes of the last meeting the Commission is to begin to-day its study of the *questionnaire*,¹ and will take up questions I, II, and III.

He informs the Commission that he has received proposals from the British delegation² and the Italian delegation³ on the points covered by the first three questions. As these proposals were filed only a few hours before the meeting, they could not be submitted to the members of the Commission. The President remarks in this connection that it is necessary that proposals concerning points to be discussed be sent to the president in time to be printed and distributed at least twenty-four hours in advance of the meeting. He asks whether the Commission would nevertheless be disposed to begin the discussion thereof.

His Excellency Sir Edward Fry states that he does not insist upon an immediate discussion.

The President proposes therefore that the meeting begin with a discussion of question I and a general exchange of views on question II, reserving the discussion of the British proposal.

On the invitation of the President, Mr. Fromageot, Secretary of the Commission, reads the Italian proposal, which is worded as follows:

A merchant ship may not be converted into a war-ship unless it is placed under the command of a naval officer of its State and unless it has a crew governed by all the rules of military discipline.

[745] Vessels that leave the territorial waters of their country after the outbreak of hostilities may not change their character either on the high seas or in the territorial waters of another State.³

The President proposes that the discussion of this project be postponed until the next meeting.

¹ Annex 1.

² Annex 2.

³ Annex 4.

He then asks the Commission to pass upon question I: Is it recognized, in practice and in law, that belligerent States may convert merchant ships into war-ships?

No delegation having demanded the floor, his Excellency Count Tornielli has this silence recorded, which, according to him, is to be interpreted as an affirmative reply to question I, provided, however, that the conversion of the merchant ship into a war-ship be complete.

His Excellency Sir Edward Fry is of the same opinion, with the reservation of the conditions under which the conversion will be legal.

The President states that there can be no doubt as to the view of the Commission: the belligerent has the right to convert merchant ships into war-ships and this right may be assimilated to that of engaging militia to reinforce the army on land.

This point of view is unanimously adopted.

The President reads question II: When merchant ships are converted into war-ships, what legal conditions should the belligerent States observe?

He remarks that a general exchange of views on this subject would be very useful, taking into account the British and Italian proposals.¹

His Excellency Vice Admiral Jonkheer Röell reads the following proposal:

1. It is permissible to convert a merchant ship in the service of the State into a war-ship.

2. Converted vessels must be commanded by a naval officer and their crews must be wholly or partially military.

3. A converted ship must fly at its gaff and at its masthead the man-of-war flag and the pennant or flag of its commander.

4. In time of war, conversion may be effected only in a national port; the converted vessel must there be provided with a commission furnished by the competent authority of the Government whose flag it flies.

5. The commander of a converted vessel must respect the laws and customs of war at sea.

6. All vessels claiming to be war-ships, which do not comply with the above-mentioned conditions, shall be treated as pirate ships.

The proposal will be printed and distributed.²

Mr. Heinrich Lammasch proposes that there be added to the conditions enumerated by His Excellency Vice Admiral Jonkheer RÖELL that as long as hostilities last the conversion shall be permanent and reconversion into a merchant ship shall be forbidden.

[746] With a view to greater clearness in the discussion, Captain Behr asks permission to define a war-ship.

He therefore proposes, in the name of the Russian Government, the following formula:

Every vessel commanded by a naval officer in active service and having a crew governed by the military code is considered a war-ship.

The vessel must, by order of its Government, fly the man-of-war flag, and as soon as this order is issued the vessel is considered as registered in the list of the war-ships of its country.

The proposal will be printed and distributed.³

¹ Annexes 2 and 4.

² Annex 5.

³ Annex 3

His Excellency Mr. Keiroku Tsudzuki makes the following proposal:

The Japanese delegation submits to the consideration of the Commission the following proposal with regard to the places where the conversion of a merchant ship into a war-ship may be effected:

A merchant ship may not be converted into a war-ship except in the national ports or territorial waters of the State to which the merchant ship in question belongs, or in the ports or territorial waters occupied by its naval or military forces.¹

The President proposes that the discussion of these various proposals be deferred until the next meeting.

The PRESIDENT reads question III: Should the practice now in vogue relative to the capture and confiscation of merchant ships under an enemy flag be continued or abolished?

The PRESIDENT directs Mr. Fromageot to read the proposal made by the United States of America at the last meeting on this point.²

His Excellency Baron von Macchio reads the following declaration:

In taking up the examination of question III of the *questionnaire* submitted to the Fourth Commission, the Austro-Hungarian delegation desires to call attention to the fact that in its opinion the principle of the inviolability of private property at sea in time of war having been the subject of so much serious consideration and legal study is now so universally recognized that further discussion on the question of principle would seem to be merely a recapitulation of opinions, more or less identical, again and again expressed by the most competent and learned savants.

Austria-Hungary, taking into account the great interest of individuals and the essentially humanitarian object of this principle, long ago adopted it and has conformed thereto, whenever such a case has arisen.

Consequently the Austro-Hungarian delegation is in a position to declare at this time that its Government takes the most liberal view in the matter of the capture and confiscation of merchant ships under enemy flags.

His Excellency Mr. Ruy Barbosa takes the floor and speaks as follows:

Mr. President, the question which you have put in No. III of your *questionnaire*, asking us whether the practice now in vogue with regard to [747] the capture and confiscation of merchant ships under an enemy flag should be continued or abolished is not, in my opinion, an appeal to theory, but rather a question of a practical character addressed to the governments and statesmen in the light of the results of experience, the lessons of history, the traditions of the several countries, and the general tendency of public opinion among modern nations.

I do not, indeed, lose sight of the part that theory is called upon to play in the solution of this problem. But it is for others, for the masters, for the recognized leaders in legal instruction, for the great representatives of legal culture to determine the principles, to set them forth in their full force and luminous influence, although it seems to me that the matter has been thrashed out to the point of exhaustion, so lavishly have both those who clamor for

¹ Annex 6.

² Annex 10.

reform and those who cry out against it expended reason, authority and eloquence in this debate, which has lasted more than a century.

Hence as regards this phase of our work, my participation would be very weak, if not utterly worthless, and I would not be so rash as to deprive others of a place to which I have no right. But the historic attitude of my country with respect to the idea which the American proposal, already submitted to your examination, urges you to adopt, imposes upon me the duty of taking the floor to make a statement which, by recalling our international past in this controversy, shall clearly and firmly define the Brazilian attitude on the question. Ours is a rather modest place, as we are well aware, in the concert of nations, where the great Powers are dominant with all the majesty of their preponderance. But we set no less store by our logic and we have no less respect for our traditions. We are faithful to our worthy national memories when we find that time and our interests have maintained them and have caused them to take firmer root and to be more and more present with us.

From this point of view there is nothing more remarkable than the example of the United States in the matter of the condemnation of the right of capture, whether it is exercised by privateers or whether it is the privilege of war-ships. The proposal submitted to the Peace Conference of 1899 and that of 1907 is merely a repetition of a thesis contemporaneous with the birth of the great republic, a thesis maintained successively in 1783 in its negotiations with Great Britain, in 1785 in its treaty with Prussia, in 1823 in the draft convention with Russia, in 1854 in the reply of BUCHANAN to Lord CLARENDON with regard to the Crimean War, and, finally, in 1856-1858 by its refusal to accede to the Declaration of the Congress of Paris.

From that time—that is to say, from the moment when this question was first laid before us—the Brazilian Government has adhered to the principle of the inviolability of private property at sea. As you know, gentlemen, the United States refused to subscribe to the abolition of privateering, considering this abolition as inconsequential, iniquitous, and as such inadmissible, unless linked with the absolute rule of the inviolability of private property in naval warfare. Beginning in the eighteenth century the North American Republic has never ceased to maintain that these two liberal aspirations, the suppression of privateering and the abolition of the right of capture, are inseparable. In opposing for this reason Article 1 of the Declaration of Paris, which abolished only privateering, the Washington cabinet addressed, under date of November 5, 1856, a note to the cabinet of Rio de Janeiro, inviting the latter to join with it on these two points. Two years earlier, Mr. BUCHANAN had used similar language to Lord CLARENDON, and President PIERCE had expressed himself to the same effect in his message of December 4, 1854.

“Should the leading Powers of Europe,” said the latter, “concur in proposing as a rule of international law to exempt private property upon the [748] ocean from seizure by public armed cruisers as well as by privateers, the United States will readily meet them upon that broad ground.”

Similarly, in the above-mentioned note the minister of the United States at Rio de Janeiro said to the Imperial Government two years later: The undersigned has been directed by the President to propose to the Government of Brazil that the two countries enter into an agreement to acquiesce in the four principles of the Declaration of the Congress, provided there be a modification

of the first of these principles, as specified in Mr. MARCY'S note of July 28, 1856 to Count DE SARTIGES. Without this modification, the President will be compelled, for many important reasons, some of which are therein set forth, not to accede to the first principle of the Declaration.

In the note to which this refers, Mr. MARCY, Secretary of State at Washington, addressed Mr. DE SARTIGES, Envoy Extraordinary and Minister Plenipotentiary of France to the United States, repeating the same protest, the same contention, and the same proposal, which from the time of BENJAMIN FRANKLIN and THOMAS JEFFERSON have characterized so unbrokenly and steadfastly the North American policy with regard to this question. "The undersigned," wrote the Secretary of State of the United States to the representative of NAPOLEON III, "is directed by the President to say, that to this principle of exempting private property upon the ocean, as well as upon the land, applied without restriction, he yields a most ready and willing assent."

This was a long reasoned note and in showing the vexatious consequences as regards the general interest of nations of the practice maintained by the incomplete terms of the Declaration of Paris, concludes as follows:

"The President, therefore, proposes to add to the proposition in the Declaration of the Congress at Paris the following words: 'and that the private property of the subjects or citizens of a belligerent on the high seas shall be exempted from seizure by the public armed vessels of the other belligerent, except it be contraband.' A few months later—that is to say, on December 2, 1856,—President PIERCE in his annual message to Congress, repeating what he had said in 1854, insisted in the same clear terms upon this line of conduct. "I have expressed," said he, "a readiness on the part of this Government to accede to all the principles contained in the declaration of the conference of Paris provided that the one relating to the abandonment of privateering be so amended as to effect the object for which, as is presumed, it was intended—the immunity of private property on the ocean from hostile capture. To effect this object, it is proposed to add to the declaration that 'privateering is and remains abolished' the following amendment:

"'And that the private property of subjects and citizens of a belligerent on the high seas shall be exempt from seizure by the public armed vessels of the other belligerent, except it be contraband.' This amendment has been presented not only to the Powers which have asked our assent to the declaration to abolish privateering, but to all other maritime States. Thus far it has not been rejected by any, and is favorably entertained by all which have made any communication in reply."¹

France, Prussia, Russia, the Netherlands, and Sardinia did, in fact, show themselves disposed to accept the American proposal and to abolish both privateering and the capture of enemy merchant ships and their cargoes. Even Great Britain "recognized in the amendment proposed by the American Government an equitable principle" and declared that she "saw no objection to making it the subject of a common conference," although stating that she "might find herself constrained, on examining the details of the question, to make certain reservations to be submitted at the proper time and place to [749] the judgment of the Powers called upon to discuss the matter."²

¹ Moore: *International Law Digest*, vol. vii, pp. 564, 565.

² Dispatch of Mr. de Creptowitch, Russian Ambassador at London, dated November 15,

In reply to the American proposal, the Government of Brazil did not concur therein and refuse its assent to Article 1 of the Declaration of Paris. On the contrary, it commended that article. But at the same time it eagerly joined with the United States in its efforts for the establishment of the complete immunity of private property in naval warfare.

Our declaration, contained in the note of the Brazilian Chancery to the French Legation, under date of March 18, 1857, was worded as follows:

Humanity and justice are indeed indebted to the Congress of Paris for a great improvement in the common law of States; but in behalf of the same principle we must further ask of the Powers signatory to the treaty of March 30, 1856, as a consequence of their work of peace and civilization, the beneficent consequence contained in the maxims therein proclaimed. This consequence is that all innocent private property, including merchant ships, must remain under the protection of maritime law against attack on the part of war cruisers.

The Imperial Government hereby adheres to the invitation of the United States of America and, in the hope of seeing the extension proposed by that Power of the first of the principles adopted by the Congress of Paris carried out, declares itself ready to accept it forthwith as the complete expression of the new international jurisprudence.¹

In taking this stand, the Department of Foreign Affairs of Brazil hastened to inform the American Legation at Rio, by means of the note dated March 18, 1857, in which the Government of the Emperor stated: "Mr. TRONSDALE will see from the enclosed document, to which the undersigned refers, that the Imperial Government has considered it advisable to give its approval to the maxims proclaimed by the Congress of Paris, the more so because a large part of them were already sanctioned in the conventional law of the Empire. But the undersigned is extremely pleased to be able to add that Mr. TRONSDALE will see from the document itself that the Government of His Majesty the Emperor, in accepting these principles, has at the same time declared itself to be disposed to subscribe to the extension proposed by the United States of America as the necessary and salutary complement of the new international policy."

These memorable notes were both signed by Minister SILVA PARANHOS, later Viscount RIO BRANCO, whose name, celebrated especially as that of one of the protagonists in the emancipation of the slaves in Brazil, has found in his son, our present Minister of Foreign Affairs, a successor, whose mind and services recall those of his father; a happy coincidence which has placed, as it were, the stamp of personal identity upon the national continuity of our tradition.

In laying this evidence before you, gentlemen, I am happy to state to you now that neither the sentiments of my country nor those of its Government, which is bound to interpret them and whose instructions I follow, have changed in this respect in the past fifty years.

We are therefore merely preserving our ancient heritage in willingly adopt-

1856. De Boeck, *De la propriété privée ennemie sous pavillon ennemi*, pp. 117-118; Vidari, *Del rispetto della proprietà privata fra gli Stati in guerra*, 1867, p. 204, note 2; Lavaleye, *Du respect de la propriété privée sur mer en temps de guerre* (*Académie Royale de Belgique. Extraits des Bulletins*, 2d series, vol. 43, no 5, May, 1877), pp. 8-9.

¹ Report of the Department of Foreign Affairs of Brazil for 1857, annex C, p. 16.

ing the proposal filed with the Bureau of the Conference in the name of the delegation of the United States, and, Mr. President, in replying to your question, in the name of the Brazilian delegation, that, in our opinion, it is proper to abolish the practice hitherto in vogue of the capture and confiscation of [750] enemy private property under an enemy flag in naval warfare. (*Applause.*)

The President thanks his Excellency Mr. RUY BARBOSA on behalf of the Commission for the interesting address which he has been good enough to make. He recalls that in 1899 his Excellency Mr. WHITE, first delegate of the United States of America, brought up this same question of the immunity of private property at sea in naval warfare. It was agreed to refer it to the Second Conference. Now the United States has again made the same proposal. It would be desirable to know the opinion of the different Governments represented in the Fourth Commission upon this matter and to decide whether the question is ripe for solution at the present time.

His Excellency Mr. Choate takes the floor and speaks as follows:

The Government of the United States of America has instructed its delegates to the present Conference to urge upon the nations assembled the adoption of the following proposition:

The private property of all citizens or subjects of the signatory Powers with the exception of contraband of war shall be exempt from capture or seizure on the sea by the armed vessels or by the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said Powers.

This proposition involves a principle which has been advocated from the beginning by the Government of the United States and urged by it upon other nations and which is most warmly cherished by the American people, and the President is of opinion that whatever may be the apparent specific interest of our own or of any other country for the time being, the principle thus declared is of such permanent and universal importance, that no balancing of the chances of probable loss or gain in the immediate future on the part of any nation, should be permitted to outweigh the considerations of common benefit to civilization which call for the adoption of such an agreement.

At this rare moment of universal peace existing throughout the world the representatives of all the nations of the world, are assembled for the first time, to consult and agree upon what may tend to make this peace permanent, and while each nation is of course at liberty to contend here for what its own peculiar interests demand, there should be a spirit of mutual concession and compromise, which would favor the adoption of a principle so clearly for the common benefit of mankind although it may demand of particular nations the yielding of some relic of belligerent rights.

We are here under circumstances which demand of the Conference the fullest and fairest consideration of this important question. In the First Peace Conference in 1899 the subject was not included in the program, and being embodied in a Memorial of the United States Commission addressed to his Excellency Mr. DE STAAL, President of that Conference, strongly urging its consideration, the Memorial was referred by him to the appropriate committee, which reported that the committee did not consider itself competent to discuss

the subject, and that it was therefore not ready to consider the question upon its intrinsic merits; but that it had instructed its chairman to report in favor of a resolution to be adopted by the Conference expressing the hope that the whole subject would be included in the program of a future Conference. After the representatives of two of the great Powers had announced, that in the absence of instructions from their Government they were obliged to abstain [751] from voting, the report of the committee was unanimously adopted, and accordingly in the Final Convention adopted on the 29th of July for the specific regulation of international conflicts it was unanimously voted, saving the abstentions referred to, as follows:

5. The Conference expresses the wish that the proposal which contemplates the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.

We are here therefore to-day, with our favorite proposition, as a matter of right, the same having been included in the original program for this Conference proposed by his Imperial Majesty the Emperor of Russia and assented to by all the Powers, so that no nation can properly refuse to vote upon it on the plea of lack of instructions.

We have said that the immunity of the private property of belligerents at sea has been the traditional policy of the United States from the formation of its Government, and as will appear it was so even before that date.

But at the outset, to avoid any misapprehension that might arise from this statement, I ought most frankly to concede that the United States has never been able to put this policy into practical operation, because other Powers, although sometimes resorting to it for temporary purposes or by special agreement, have never consented to make such immunity a permanent rule of international law. And as this could not be accomplished except by the general consent of all the nations, it has in practice in all its wars, following the usages of other nations, made use of the belligerent right of capture of enemy's private ships, and sometimes, as in the war of 1812, to a very large extent, and only very recently has it by statute abolished prize money, which has generally been regarded as a material incentive to such capture. We thus confess that our Government has heretofore acted without regard to the growing sentiment of our own citizens and of those of other nations in favor of immunity, and in this respect we claim to be no better than any other of our sister nations when acting as belligerents. It never would be possible or practicable for any belligerent to adopt the rule unless it becomes, as we hope it eventually will become, a positive rule acknowledged by every maritime Power.

But now, in the light of our own experience of the comparative advantages and disadvantages that have resulted in the past from the exercise of this belligerent right, and of its constantly decreasing value to belligerents, by reason of increased facilities of transportation by land from neutral ports and through neutral territories to belligerents, and because the great Powers are to-day concentrating their fleets for purely military operations looking to the control of the sea, and are only building vessels which are useful for combat, we think the time has come to appeal to the maritime nations of the world assembled in this Conference, to agree to desist from this antiquated and mischievous resort to the capture of enemy's ships, and to leave the high seas free for the

prosecution of innocent and unoffending commerce, the security and integrity of which is of such vast consequence to all the world.

In his messages to Congress, in December, 1903, President ROOSEVELT quoting and enforcing a previous message of President MCKINLEY in December, 1898, said:

The United States has for many years advocated this humane and beneficent principle, and is now in a position to recommend it to other Powers without the imputation of selfish motives.

[752] In response to this message the Congress of the United States, on the 28th of April, 1904, adopted the following resolution:

That it is the sense of the Congress that it is desirable in the interest of uniformity of action by the maritime States of the world in time of war, that the President endeavor to bring about an understanding among the principal maritime Powers with a view to incorporating into the permanent law of civilized nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents.

In the negotiation bearing upon the Treaty of Peace with Great Britain in 1783, four years before the adoption of the Constitution of the United States, that great lover of peace, BENJAMIN FRANKLIN, our accredited plenipotentiary in Europe, strongly urged the adoption of this principle, and proposed the insertion in the Treaty of this clause:

And all merchants or traders with their unarmed vessels, employed in commerce, exchanging the products of different nations, and thereby rendering the necessary conveniences and comforts of human life more easy to obtain and more general, shall be allowed to pass freely unmolested. And neither of the Powers, parties to this Treaty, shall grant or issue any commission to any private armed vessels empowering them to take or destroy such trading ships or interrupt such commerce.

Our Secretary of State, HENRY CLAY, in his instructions to the delegates representing the United States at the Panama Conference in 1826, directed them to bring forward at the contemplated Congress the proposition to abolish war against private property and non-combatants upon the occasion, declaring that this had been an object which the United States had had much at heart since they assumed their place among the nations.

And Secretary of State, JOHN QUINCY ADAMS, in his instructions to our minister to England in July, 1823, had said:

It has been remarked that by the usages of modern war the private property of an enemy is protected from seizure or confiscation as such, and private war itself has been almost universally exploded upon the land. By an exception, the reason of which it is not easy to perceive, the private property of an enemy upon the seas has not so fully received the benefit of the same principle. Private war, banished by tacit and general consent of Christian nations from their territories, has taken its last refuge upon the Ocean, and there continues to disgrace and afflict them by a system of licensed robbery bearing all the most atrocious characteristics of piracy.

President MONROE, in his annual message to Congress in 1823, stated:

Instructions have accordingly been given to our Ministers with France, Russia, and Great Britain, to make proposals to their respective Governments to adopt the principle as a permanent and invariable rule in all future maritime wars. And when the friends of humanity reflect on the essential amelioration to the condition of the human race, which would result from the abolition of private war on the sea, and on the great facility by which it might be accomplished, requiring only the consent of a few Sovereigns, an earnest hope is indulged that these overtures will meet with an attention, animated by the spirit in which they were made, and that they will ultimately be successful.

Not only by such declarations, embodied in official instructions, has the United States asserted this principle, but in its diplomatic dealings with other nations it has carried it into actual effect as far as possible. In its treaty with FREDERICK, King of Prussia, negotiated in 1785, two years before the adoption of the Federal Constitution, negotiated by BENJAMIN FRANKLIN, THOMAS JEFFERSON and JOHN ADAMS, it was embodied in the treaty in almost the identical language in which it had been proposed by FRANKLIN to Great Britain two years before.

A similar provision was inserted in the treaty between the United States and the King of Italy in 1871. When our Government was invited to [753] give in its adhesion to the declaration of the Congress of Paris, in 1856, in which it was not represented, whereby it was provided that privateering is and remains abolished, that the neutral flag covers enemies' goods, with the exception of contraband of war, and that the neutral goods, with the same exception, are not liable to capture under an enemy's flag, it declined to do so unless the Declaration should be extended to include the exemption of enemies' ships as well as their goods in neutral vessels. But then and ever since it has declared its willingness to give up the right of privateering, if the other maritime nations would agree to recognize its declared principle of the immunity of the private property of non-combatants at sea.

It is pertinent to call the attention of the Conference to the extent to which our principle has been carried into active effect by other nations from time to time and for temporary periods.

The principle was adopted and carried out in the war of 1866 by Prussia, Italy and Austria—the three Powers concerned,—and in 1854 when the Crimean War broke out it was announced that operations would be confined to organized military and naval forces of the enemy. But the announcement was accompanied with the distinct reservation that the rights enumerated were waived for the time being only. And on the outbreak of the Franco-Prussian war of 1870 an attempt was made by one of the belligerents to protect non-combatant commerce, but the protection was eventually withdrawn on the claim that it was not properly reciprocated by the other belligerents.

In 1865 Italy adopted a maritime code forbidding the capture of mercantile vessels of all hostile nations provided reciprocity in that respect were observed by the other belligerent, and the rule was observed in the war between Italy and Austria shortly afterward.

There have also been frequent declarations upholding our principle by bodies whose utterances were entitled to very great respect.

In 1859 an assembly of influential merchants and shippers held at Bremen declared in favor of the doctrine. And Hamburg, Stettin, Breslau and the Chambers of Commerce of Upper Bavaria concurred in this expression of enlightened policy. On the 18th of April, 1868, the Reichstag of the North German Confederation adopted almost unanimously a resolution proposed, which directed the chancellor of the Federation to undertake negotiations with other Powers, in order to secure the recognition of the principle of immunity. And the Declaration of DELBRÜCK in the Bundesrath left no room to doubt that the Bundesrath and especially the Prussian Government, regarded the reaching of this goal as desirable as corresponding to the traditions of Prussian policy.

Professor VON BAR, to whom we are indebted for the last few facts above recited, says further :

Even in England pronouncements of a like kind had been several times made. And in the Brussels International Conference of 1874, which busied itself with the laws of war, the Russian Government introduced a project in which it was expressly said that operations of war should not direct themselves against private persons—a principle incorporated in Article 40 in the Project of the Brussels Conference in the following words: "Private property ought to be respected." In 1875 the Institute of International Law declared expressly for the immunity of enemy private property (enemy merchant ships) reserving, however, the right of capture of contraband.

It may be stated without qualification that the Chambers of Commerce throughout the world have declared in favor of our principle and urged its adoption by their various Governments.

[754] It may not be improper to observe that the Government of the United

States has uniformly advocated the doctrines of immunity under all the vicissitudes through which it has passed, without regard to the effect upon its temporary interests for the time being. Before we had an organized Government with no army and no navy, and only a feeble merchant marine;—afterwards, as that marine gradually but surely increased in amount and value, until at last it became a close second to the mercantile marine of England;—at a later period, in our Civil War, when by the incursions of a few Confederate cruisers our merchant shipping engaged in foreign commerce was actually swept from the seas;—so that at the end of the Civil War, when our extemporized navy was dispersed, we had neither naval nor commercial marine;—and so on down to the present time, when we have an efficient navy, but only a meager tonnage engaged in foreign commerce, only about seven per cent of our great exports and imports passing in and out of the port of New York under our own flag—in all these varying circumstances, without regard to its direct or indirect effect upon our own fortunes and interests, we have uniformly advocated the doctrine as one of immense importance to civilization and to the general welfare of all nations.

In this we may fairly claim that we have been sustained by the general consensus of statesmen and jurists of many countries who have made themselves felt upon the question.

Beginning with England we have the utterance of Lord BROUGHAM in 1806:

The private property of pacific and industrious individuals seems to be protected, and except in the single case of maritime capture it is spared

accordingly by the general usage of all modern nations. No army now plunders unarmed individuals ashore, except for the purpose of providing for its own subsistence. And the laws of war are thought to be violated by the seizure of private property for the sake of gain, even within the limits of the hostile territory. It is not easy at first sight to discover why this humane and enlightened policy should still be excluded from the scenes of maritime hostility, or why the plunder of industrious merchants, which is thought disgraceful on land, should still be accounted honorable at sea.

And Lord PALMERSTON, in his address to the Liverpool Chamber of Commerce on November 8, 1856, declared:

I can not help hoping . . . that in the course of time those principles of war, which are applied to hostilities by land, may be extended without exception to hostilities by sea, so that private property shall no longer be the object of aggression on either side. If we look at the example of former periods we shall not find that any powerful country was ever vanquished through the losses of individuals. It is the conflict of armies by land and of fleets by sea that decide the great contests of nations.

And Mr. COBDEN, in 1862, in his address to the Manchester Chamber of Commerce, after referring to the refusal of the Government of the United States to adhere to that part of the Declaration of Paris abolishing privateering, said:

That Government . . . stated that they preferred to carry out the resolution which exempted private property from capture by privateers at sea a little further, and to declare that such property should be exempted from seizure whether by privateers or by armed government ships. Now, if this counter proposal had never been made I contend that after the change had been introduced affirming the rights and privileges of neutrals it would have been the interest of England to follow out the principle to the extent proposed by America.

[755] And JOHN STUART MILL, in a speech in 1867, said:

Those who approve of the Declaration of Paris mostly think that we ought to go still farther; that private property at sea, except contraband of war, should be exempt from seizure in all cases, not only in the ships of neutrals but in those of the belligerent nations. This doctrine was maintained with ability and earnestness in this House during the last session of Parliament, and it will probably be brought forward again for there is great force in the argument on which it rests.

Sir HENRY MAINE, a great authority on international law, as well as upon the principles of justice in general, writing in 1888, with a view to satisfy his Government that it was greatly for the interest of Great Britain to concur in the American doctrine, said:

These of course are economical reasons, but I also look on the subject from the point of view of international law. Unless wars must be altogether discarded, as certain never again to occur, our situation is one of unexampled danger. Some part of the supplies which are matter of life and death to us may be brought to us as neutral cargo with less difficulty than before the Declaration of Paris was issued, but a nation still permitted

to employ privateers can interrupt and endanger our supplies at a great number of points, and so can any nation with a maritime force of which any material portion can be detached for predatory cruising. It seems, then, that the proposal of the American Government to give up privateers on condition of exempting all private property from capture might well be made by some very strong friend of Great Britain. If universally adopted it would save our food and it would save the commodities which are the price of our food, from their most formidable enemies, and would disarm the most formidable class of these enemies.

And finally, as expressive of the sentiments of at least a portion of the English Government and people of the present day, we have the letter to the *Times* of October 4, 1905, of the present Lord Chancellor of Great Britain in which he most emphatically endorses the American doctrine. He says:

It may be asked what prospect is there of altering the law in this respect even if we desired it. An answer may be found in the history of this question upon which, instructive though it is, a few words must suffice. During the last fifty years or more the United States have persistently advocated this change even to the point of refusing to abandon the right of privateering in 1856 unless all property, other than contraband, should be declared free from maritime capture, Germany, Austria, Italy, Russia have all within the last half century either adopted in their own practice or offered to adopt the American view, and Continental jurists have almost without exception denounced the existing law. Last year President ROOSEVELT declared in favor of a new international Conference at The Hague, and notified that among other matters for deliberation the United States intended again to press this very subject on the attention of the Powers. Unquestionably the American President, with the immense authority he now wields, will exert every effort to maintain his point. I trust that his Majesty's Government will avail themselves of this unique opportunity. I urge it not upon any ground of sentiment or of humanity (indeed no operation of war inflicts less suffering than the capture of unarmed vessels at sea) but upon the ground that on the balance of argument coolly weighed the interests of Great Britain will gain much from a change long and earnestly desired by a great majority of other Powers.

It may also be safely asserted that the judgment of many eminent English writers on international law has been pronounced in support of the American doctrine.

Nor have Continental authorities been backward in support of the same policy. CHATEAUBRIAND declared on behalf of the French King, that could all nations be induced to agree to the principle: "His Majesty would congratulate himself on having given a salutary example, and in having proved that without compromising the success of war, its scourge could be abated."

[756] Count NESSELRODE, who for many years controlled the foreign affairs of Russia, expressed himself to Mr. MIDDLETON, the American minister at St. Petersburg who negotiated the Treaty of 1824 between the two countries: "That the Emperor sympathized with the opinions and wishes of the United States, and as soon as the Powers whose consent was indispensable to make it effective was obtained, he would authorize his minister to discuss the different articles of an act which would be a crown of glory to modern diplomacy."

And many Continental writers on international law of great eminence, whose authority is not limited to the boundaries of their own country (such as BLUNTSCHLI, CALVO, JACQUEMYNS, PIERANTONI, AHRENS, PERELS, DUPUIS and MARTENS) might be cited in strong support of the same view.

By authority of President ROOSEVELT we ask for the adoption by the Conference of this historic American doctrine on broad humanitarian grounds, as tending greatly to promote the cause of civilization, as removing the last relic of barbarism in maritime warfare, and as a great principle of justice which is sure to advance the cause of peace, being as indispensable to the general interests of neutrals as for the preservation of the integrity of commerce in which the community of interest of all nations is at last finally established.

There is no reason for the immunity of private property upon land from wanton plunder and destruction which does not equally apply to similar property upon the sea. We do not ignore or in any way seek to evade the rules of military law by which private property upon land may be occupied and held for legitimate military purposes, such as making requisition for the support of armies, or for levying taxes, or with a view to ultimate annexation by the victor, of which the unrestricted right of commercial blockade is a fair equivalent on the sea.

But leaving aside all that part of military law which is undisputed, because it has no bearing upon the present question, we submit that there is a perfect analogy between the exemption of private property on land not needed for military purposes, from spoliation and destruction which is now established for centuries by the usage of nations and a similar exemption which we claim for private property on the sea, not needed for military purposes.

We do not deny that a private house and its contents, which stood in the way of a hostile advancing army, in its efforts to reach and attack the other belligerent, might properly be swept away and be entitled to no exemption. But nothing can be better settled, than that apart from the military necessities already referred to, for the commander of an army to send out forces for the purpose of robbing private houses of their contents, and destroying the residences of unoffending non-combatants, would be a gross violation of every principle of justice and good morals, and of the existing laws of war, and to this extent in the same way the wanton spoliation of non-combatant ships and cargoes not needed for military purposes, for the mere purpose of enriching the captors, or their governments, or of terrorizing the unfortunate owners and their governments and coercing them to submit to the will of the triumphant belligerent, and to accept his terms, is abhorrent to every principle of justice and of right, and ought to be remitted to the same category of condemnation in which similar outrages upon non-combatants on land are now universally included.

[757] It may not be out of place at this point to define the limits of the concession which our proposition demands of belligerent nations, or of those who are liable at any time to become so. In demanding the exemption of enemy ships, with whatever cargo they may contain, from capture and destruction, we are but following in the footsteps of Great Britain and the other parties to the Treaty of Paris of 1856, and carrying to its logical conclusion the great step in advance towards the amelioration of the horrors of war that was then made by them. By her Order in Council of April 15, 1854, Great Britain declared that her Majesty, being desirous of rendering the war (that is the Crimean War) as little onerous as possible to the powers with whom she remains at peace,

and in order to preserve the commerce of neutrals from all unnecessary obstruction, was willing to waive a part of the belligerent rights appertaining to her by the law of nations and "that Her Majesty would waive the right of seizing enemy's property laden on board a neutral vessel unless it be contraband of war," which was a wide and magnanimous departure from the doctrine which up to that time she had tenaciously held of the right of seizing enemy's goods wherever found.

The credit of this first step in this progress to peace belongs exclusively to Great Britain, and should be universally acknowledged, as it is a complete answer to any suggestion that she stands in the way of such progress. The Declaration that followed the close of the war, signed by the representatives of France, Austria, Prussia, Russia, Sardinia, Turkey and England established this first step as a full and final one on the part of those nations and of many other States which have since given in their adherence. And as Mr. SHELDON AMOS says: It is well known that the continual refusal to adhere on the part of the United States is solely due to their insisting on securing still greater immunities for commerce as the price of abandoning their right to use privateers.

The reason which the United States of America gave for refusing to adhere to the Declaration of Paris, was that it did not go far enough in that while exempting from seizure merchandise, enemy's property, on neutral vessels, it did not carry that doctrine to its logical conclusion and exempt also from seizure ships belonging to individuals of the enemy.

In a letter addressed to Mr. DE SARTIGES, French Minister at Washington, July 28, 1856, Mr. MARCY, Secretary of State, proposed, in the name of his Government, to add to the first article of the Declaration of Paris (abolishing privateering) the following words:

And the private property of subjects or citizens of any one of the belligerent powers shall not be subject to seizure by the vessels of the other unless they contain contraband of war, after saying: Justice and humanity demand that this practice (of subjecting private property on the ocean to seizure by belligerents) should be abandoned, and that the rule in relation to such property on land should be extended to it when found upon the high seas.

And he justified his proposition in an elaborate argument. Our position then was and ever since has been that we are ready to give up privateering whenever the other Powers should consent to extend the principle of immunity to enemy's ships as well as to their goods on neutral vessels.

It is significant that Russia welcomed the proposition of Mr. MARCY in terms that deserve to be recalled. In September, 1856, Prince GORTSCHAKOFF wrote to the Russian Minister at Washington:

[758] Your Excellency will have occasion at Paris to take notice of the note of Mr. MARCY, in which the proposition of America is developed in a manner so able and so luminous that it commands conviction. The Secretary of State does not weigh exclusively the interest of the United States; he upholds that of all peoples. He has supported this generous idea by arguments which admit of no reply. The attention of the Emperor has been excited to the highest degree by these overtures of the American cabinet. In its way of putting the question they deserve to be taken into serious con-

sideration by the Powers signatory to the Treaty of Paris. They would honor themselves in proclaiming to the world in a unanimous resolution the principle that the inviolability which they have always recognized as to the private property on land should be also extended to that property at sea. They would thus crown the work of pacification which has called them together, and they would give to peace a new guarantee of duration. By order of the Emperor you are invited to lay these views before the Minister of Foreign Affairs and to let him know that if the American proposition becomes the subject of deliberation in common among the Powers it will receive a decided support on the part of the representative of His Imperial Majesty. You are likewise authorized to declare that Your August Master would be disposed to take the initiative in that matter.

And Mr. LAVELEYE says in the same connection:

The proposition of the United States was well received by all the other States signatory to the Congress of Paris, above all by France and Russia. Piedmont and Holland applauded it and even England did not reject it.

Since this declaration all that remains to the parties to it as belligerents, of the ancient right of capturing and destroying enemy's property, is limited to enemy's ships. And the question is, whether this remnant of belligerent right under present circumstances is of sufficient value for military purposes, to justify a belligerent State in refusing to waive it in response to the general demand of public opinion already everywhere pronounced in the most emphatic manner, and which is sure, sooner or later, to command on the part of all nations obedience to its behests. For nations, like individuals, however powerful in themselves, are the subjects of public opinion, which in the end must rule the world.

As to the value of this remnant of belligerent right, it is to be observed that in modern times it has greatly diminished and is still rapidly diminishing. In ancient times it was perhaps the principal factor in maritime war, the power to destroy enemy's property of every kind, public and private, wherever it could be found afloat. But now that war has properly come to be regarded as a test of strength between the organized armed forces and the financial ability of the respective contestants to maintain the contest by sea and land, the power to destroy enemy's non-combatant ships upon the sea is no longer a very potent factor.

No instance, we think, can be found in modern wars of a war having been prevented or shortened by the exercise of this power, and the destruction of merchant shipping has been, and is, and is likely to be, a comparatively trifling incident in the contests of nations. Take for instance our own Civil War which lasted for four years and during which, as we have said, our mercantile shipping was substantially destroyed or swept from the seas by a few confederate cruisers. The fact distressed us very much, but it exercised not the slightest influence in bringing the war to a close, which was brought about by the maintenance of an effective blockade and the overwhelming superiority of the military and financial power of the Union.

Our experience in that contest shows that the first thing that happens on the commencement of a war to which a maritime nation is a party is the transfer to neutral flags and bottoms of the principal part of its carrying trade, and a transfer, by means of insurance against the war risk and largely to foreign

[759] nations, of liability to loss by the destruction of that which remains under the flag. So that this remnant of belligerent right whether regarded as a deterrent from war, or as a means of terrorizing the enemy's government and reducing it to submission as a means of terminating the war, has ceased to be an important factor.

Again, this remnant of right to destroy enemy's non-combatant merchant ships is not to be confounded with the right of blockade which, if our demand is granted, will still remain in full force. It has been argued, on the part of those who would maintain for belligerents the continuance of the ancient practice, as if we were demanding some impairment of the right of blockade. But our proposition as we have stated it excludes all possibility of this idea, as we ask only for the exemption from capture of enemy's merchant ships not carrying contraband of war and not attempting to violate a blockade.

It is therefore for every nation to judge for itself whether since the Declaration of Paris, which gave much more than half the right away, and since these changes in modern methods of business which have so materially minimized the value of the remnant of the right, it is of sufficient importance to justify it in refusing to abandon what remains, in deference to the general demand of the civilized world, and whether it may not safely comply with this demand and give up what is of so little value, and carry out to its logical conclusion the humane reform of the evils of war which was so nobly commenced in 1854 and 1856.

On behalf of the United States of America we make this appeal to our sister nations to give their assent to our humane and pacific proposition, which we for more than a century have sought to bring about.

First on humanitarian grounds. The capture and destruction of enemy's private property at sea, belonging to unoffending non-combatants who are pursuing international trade, not for their own benefit alone but for the common benefit of the world, is the last remaining element of ancient piracy. To despoil innocent and unoffending merchants, who are taking no part in the war, of their ships and the goods contained in them, or to destroy them if the convenience of the captors requires, savors of the savagery of ancient war. It ought no longer to be tolerated by civilized nations. And as it is generally accompanied by holding under most unwholesome conditions the crews of the captured ships, this greatly adds to the cruelty and barbarity of the proceeding. As matters now stand the damage to the individual owners far outweighs any possible benefit to the belligerent state.

Secondly, we place it on a ground more important still, of the unjustifiable interference with innocent and legitimate commerce which concerns not alone the nation to which the ship belongs, but the whole civilized world. The growth and development of international trade and commerce during the last fifty years is one of the marvels of history. It tends more than anything else to bind the nations together in the bonds of peace, and creates a community of interest which is immediately disturbed by any violent interference with it in any part of the globe. There is hardly an interest in any nations that is not immediately disturbed and subjected to jeopardy and loss by any such interference.

The merchant ship itself is but a fragment, and an inconsiderable fragment, of the commercial adventure in which it is engaged. The transportation of the cargo interests generally the neutral world, and that interest ramifies in all direc-

tions. And the capture and destruction of the ship involves all such interests in damage and ruin. As a very distinguished writer has said:

The organization of international trade demands for its conditions stability and confidence, and whatever impairs these not only to that extent weakens the organization but goes a long way to destroy it.

But the capture of private property at sea is simply the ruin of this organization, and of all on which it depends. Were maritime wars at all more common than they are, international trade would be impossible and the most pacific nations would suffer equally with those most frequently belligerent. As it is, the miserable and trivial gains acquired by making maritime prizes, and the loss occasioned to the enemy's resources by hampering his commerce, make but a poor compensation for the utter disorder in which even the capturing State involves its own trade, and the widespread confusion and disaster which is spread on every side among neutral States.

We insist upon our proposition in the third place as a direct advance toward the limitation of war to its proper province, a contest between the armed forces of the States by land and sea against each other and against the public property of the respective States engaged. If this rule which we advocate is adopted by the common concurrence of nations, that portion of destructive war which has heretofore wrought only mischief to mankind, will be put an end to, and armies and fleets, instead of being employed for the protection or destruction of innocent property of non-combatants, will be left to their proper duty of fighting with each other, of maintaining blockades and protecting seacoasts. If it be said as was objected by Lord PALMERSTON already quoted, and who afterwards changed his mind and in 1862 declared: That if we adopted these principles we should almost reduce war to an exchange of diplomatic notes.

We reply, as Sir JOHN LUBBOCK (now Lord AVEBURY) did, in the House of Commons: Well, that would be a result which we could contemplate, not only with equanimity, but with satisfaction.

"The tendency of history" he declared, "had been to render wars more humane as civilization progressed, and the extension of the Declaration of Paris to all property afloat was merely another step in that direction."

And finally we object to the old practice and insist upon our demand for its abolition on the ground that it is now no longer necessary and that it tends to invite war and to provoke new wars as a natural result of its continuance.

At the present day, by the general consent of the civilized nations of the world, and independently of any expressed treaty or other public act, it is an established rule of international law that coast-fishing vessels, with their implements and supplies, cargoes and crews unarmed, and honestly pursuing their peaceful calling, are exempt from capture as prize of war. This rule is one [761] which prize courts, administering the law of nations, are bound to take judicial notice of, and to give effect to, in the absence of any treaties or other public acts of their own Government in relation to the matter.

The reason given is a purely humanitarian one that they are engaged in feeding the hungry, even though it be the hungry of the other belligerent, and that it would be too hard to snatch from poor fishermen the means of earning their bread.

This matter was well put by LOUIS XVI, when his forces were engaged in

the American War of Independence, in a letter addressed by him on June 5, 1779, to his Admiral informing him that the wish he had always had of alleviating, as far as he could the hardships of wars, had directed his attention to that class of his subjects which devoted itself to the trade of fishing and had no other means of livelihood. That he had thought that the example which he should give to his enemies, and which could have no other source than the sentiments of humanity which inspired him, would determine them to allow to fishermen the same facilities which he should consent to grant, and that he had therefore given orders to the commander of all his ships not to disturb English fishermen, nor to arrest their vessels laden with fresh fish, even if not caught by those vessels, provided they had no offensive arms and were not proved to have made any signals creating a suspicion of intelligence with the enemy. The capture and ransom by a French cruiser of the *John and Sarah*, an English vessel coming from Holland, laden with fresh fish, were pronounced to be illegal. The whole subject was fully considered by the Supreme Court of the United States in the case of *The Paquete Habana*, 175 U. S. 677.

In the changed conditions of commerce and of naval warfare at the present day, it is difficult to understand why the same principle of immunity should not be extended to the unarmed vessels of the enemy which are engaged in the peaceful pursuit of "exchanging the products of different places and thereby rendering the necessities, conveniences and comforts of life more easy to obtain."

The temptation to any nation desiring or likely to be engaged in war to attack and prey upon the mercantile marine of its adversary as a first blow to impair his strength, is very pressing and urgent, and is an inducement much more likely to lead to war than is the fear of a similar attack from the adversary a deterrent from it, especially in the case of a nation that itself has a small mercantile marine but can muster cruisers or gunboats sufficient to attack the unarmed merchant vessels of the other side upon the sea.

And history shows us many instances where the spoliation of a nation's commerce, had led, out of revenge and a spirit of retaliation, to new wars. Indeed our own experience, as the result of our Civil War, is a marked illustration of this tendency. The destruction of our mercantile marine necessarily led, under the circumstances which brought it about, to the presentation on our part of what were known as the Alabama Claims, the existence of which unsettled produced for many years a very disturbing and embittered state of feeling between us and Great Britain, which was finally and happily relieved by the exercise of mutual patience and forbearance in sending the whole subject for amicable adjustment to the arbitration at Geneva, which resulted in the restoration of friendship and good feeling between the two countries which has subsisted to the present day.

To quote again from the distinguished writer to whom we have already referred,

[762] There is no doubt that the widespread irritation occasioned by the capture of private property at sea as much as on land is one of the main provocatives of enduring national hatred.

Apart from all historical and ethical points of view, it may well be claimed that there is another strong ground in support of the immunity at sea of private property not needed for military purposes, for which we contend. From economical considerations, it is no longer worth the while of maritime nations to construct and maintain ships of war for the purpose of pursuing merchant ships which have nothing to do with the contest. The marked trend of naval warfare

among all great maritime nations at the present time is to dispense with armed ships adapted to such service, and to concentrate their entire resources upon the construction of great battleships whose encounters with those of their adversaries shall decide any contest, thus confining war as it should be to a test of strength between the armed forces and the financial resources of the combatants on sea and on land. It is probable that, if the truth were known, there has been an actual diminution by all the maritime nations in the construction of war vessels adapted to the pursuit of merchantmen, and indeed a sale or breaking up of such vessels which had been for some time in service. Indeed, none of the great navies now existing, could afford to employ any of their great and costly ships of war or cruisers in the paltry pursuit of merchantmen scattered over the seas. The game would not be worth the candle, and the expense would be more than any probable result.

This presents in another form the idea already referred to that war has come to be, as it should be, a contest between the nations engaged, and not between either nation and the non-combatant citizens or individuals of the other nation, and it results from it that the non-combatant citizens should be let alone, and that no amount of pressure that can be brought to bear upon them, will have any serious effect in shortening any controversy.

We believe it to be true also that the policy, the necessary policy, of maritime States to-day is to concentrate their fleets so as to be prepared to meet any emergency of war with the aggregate force of such fleets, which practically will forbid to any considerable extent the pursuit of scattered merchantmen.

It is not within our province, nor would the proprieties of the occasion permit us, to attempt to convince the representatives of any nation taking part in this Conference that its own national interest requires it to give up the ancient practice and accept our proposition.

There seems in several of the nations to be a division of opinion upon the subject, the merchants, the statesmen, the jurists and the majority of the press being generally in favor of our proposition.

What we hope to do is to satisfy the Conference as a body, and that by a great majority, that the general welfare of all the nations together, as having a community of interest in the commerce of the world, requires the adoption of the principles of immunity of private property at sea,—with the exceptions embodied in our proposition. Of course it will require an agreement of all to bring about the passage of a resolution in the name of the Conference, and thereby to put an end to the existing practice. But we feel so strongly that our cause is just, and that the general opinion of the nations is with us, that we deem it extremely desirable that after the discussion a vote should be taken of all the nations represented in the Conference, with the hope that although such a vote may not

[763] result in the adoption of an unanimous decision, it will so impress the nations who dissent as to dissuade them in future conflicts from carrying the existing rule any longer into actual practice, except in case of greatest extremity. The strict international, legal right of capture may remain unimpaired, but the moral effect of a general expression of opinion against it, may prevent its any longer being carried into actual operation.

It is not incumbent and may not be proper for us at this time to anticipate the objections which will be raised and presented to our proposition. But one or two, which have already been often presented in public discussion, may properly be referred to.

It is said that the most effective means of preventing war is to make it as terrible as possible, and that to this end the destruction of private property at sea, carrying havoc among private owners and to a certain extent enfeebling the Government and nation of which they form a part, is a justifiable expedient.

We deny that it is the duty or the right of any nation to make war as horrible as possible, and that no such proposition can for a moment be tolerated by any Conference of civilized States. If it be true, the whole labor that has been expended in the last fifty years towards mitigating the horrors of war, towards preventing its recurrence and bringing about its speedy termination, has been wasted and spent in vain. If it be true, that our duty is to make war as horrible as possible, let us undo all that we have accomplished since the world set itself seriously to work to prevent and mitigate the horrors of war. Let us repeal the Declaration of Paris. Let us resume all the savage practices of ancient times. Let us sack cities and put their inhabitants to the sword. Let us bombard undefended towns. Let us cast to the winds the rights of security that have been accorded to neutrals. Let us make the sufferings of soldiers and sailors in and after battle as frightful as possible. Let us wipe out all that the Red Cross has accomplished at Geneva, and the whole record of the First Peace Conference at The Hague, and all the negotiations and lofty aspirations that have resulted in the summoning of the present Conference.

Of course there is no truth or sanity in such a brutal suggestion. Our duty is not to make war as horrible as possible but to make it as harmless as possible to all who do not actually take part in it—to prevent it as far as we can,—to bring it to an end as speedily as we can,—to mitigate its evils as far as human ingenuity can accomplish that result,—and to limit the engines and instruments of war to their legitimate use, the fighting of battles and the blockading and protection of seacoasts.

Again it is urged that the retention of this ancient right of capture and detention is necessary as the only means of bringing war to an end. That when you have destroyed the fleets of your enemy, and conquered its armies, it has no object in suing for peace as long as its commerce and its communication by transportation with other nations in the way of trade is left undisturbed.

But this seems to us to be a purely fanciful and imaginary proposition. The history of modern wars, and in fact of all wars, shows that the decisive victory over an enemy by the destruction of his fleets and the defeat of his armies is sure to bring about peace. The test of strength to which the parties appealed has thereby been decided, and there is no further object in continuing the war.

The picking up or destruction of a few harmless and helpless merchantmen upon the sea, will have no appreciable effect in reducing the Government and nation to which they belong to submission, if the defeat of fleets and armies has not accomplished that result. Besides, there is a limit to the legitimate right of even the victor upon the seas for the time being to employ his power for purposes of destruction. Victory in naval battles is one thing, but ownership of the [764] high seas is another. In fact, rightly considered, there is no such thing as ownership of the seas. According to the universal judgment and agreement of nations they have been and are always free seas,—free for innocent and unoffending trade and commerce. And in the interest of mankind in general they must always remain so.

Again it has been urged that the power to strike at the mercantile marine of other nations is a powerful factor in deterring them from war,—that the merchants having such great interests involved, liable to be sacrificed by the outbreak of war, will do their utmost to hold their Government back from provoking to or engaging in hostilities. But this we submit is a very feeble motive. Commerce and trade are always opposed to war, but have little to do with causing or preventing it. The vindication of national honor, accident, passion, the lust of conquest, revenge for supposed affront, are the causes of war, and the commercial interests, which would be put in jeopardy by it, have seldom, if ever, been persuasive to prevent it.

As to its continuance and termination, commerce really has nothing to do with it. When the military and financial strength of one side is exhausted, the war according to modern methods must come to an end, and the non-combatant merchants and traders have no more to do with bringing about the consummation than the clergymen and schoolmasters of a nation.

Once more, it is said that the bloodless capture of merchant ships and their cargoes is the most humane and harmless employment of military force that can be exercised, and that in view of the community of interest in commerce to which we have referred and the practice of insurance in distributing the loss, the effect of such captures upon the general sentiment and feeling of the nation to which they belong, is most effective as a means of persuading their Government to make peace.

But we reply that bloodless though it be it is still the extreme of oppression and injustice practised upon unoffending and innocent individuals, and that it has no appreciable effect in reaching or compelling the action of the Government of which the sufferers are subjects.

We appeal then to our fellow delegates assembled here from all nations in the interest of peace, for the prevention of war and the mitigation of its evils, to take this important subject into serious consideration, to study the arguments that will be presented for and against this proposition, which has already enlisted the sympathy and support of the people of many nations, to be guided not wholly by the individual interest of the nations that they represent, but to determine what shall be for the best interest of all the nations in general and whether commerce, which is the nurse of peace and international amity, ought not to be preserved and protected, although it may require from a few nations the concession of the remnant of an ancient right, the chief real value of which has long since been extinguished.

In the consideration of such a question, the interest of neutrals, who constitute at all times the great majority of the nations, ought to be first considered, and if they will declare on this occasion their adhesion to the humane and beneficent proposition which we have offered, we may rest assured that, although we may fail of unanimous agreement, such an expression of opinion will represent the general judgment of the world, and will tend to dissuade those of us who may become belligerents from any future exercise of this right, which is so abhorrent to every principle of justice and fair play. (*Applause.*)

The President thanks his Excellency Mr. CHOATE for the remarkable exposition he has been good enough to make to the Commission. He commends the clear way in which he has put the question and declares that he is very [765] much in sympathy with the principle upheld by the American delegation,

but it is necessary to distinguish between the personal sentiments of the delegates and the opinions they express in the name of their Governments.

The **PRESIDENT** proposes, by virtue of Article 8 of the rules¹ that a vote be taken on the question whether the principle of the immunity of private property at sea in naval war be given obligatory force.

His Excellency **Mr. Beernaert** observes that the question under discussion is one of the most important of the program. It deserves careful study, and **Mr. CHOATE**'s very remarkable address, whose meaning has been conveyed to many of us merely in a rapid summary, deserves the entire attention of the assembly. He feels compelled therefore to propose that the discussion be continued at a later date.

His Excellency **Count Tornielli** observes that Italy has been frequently referred to in the present discussion. He therefore desires to make clear Italy's attitude by the following declaration:

Italy, who is a signatory to the Declaration of Paris of March 30, 1856, relative to the permanent abolition of privateering, has been and still is a faithful partisan of this salutary principle. She has nevertheless accepted in practice the doctrine so tenaciously upheld by the United States of America with regard to respecting private property at sea. At the Conference of 1899 the position of Italy in this question was declared. But it may be that the present Conference will not be able to adopt a resolution completely favorable to the acceptance of the respect of private property at sea. In anticipation of this contingency, the Italian delegation expresses the desire that intermediate proposals be presented and discussed before the discussion under No. III of the *questionnaire* be closed.

His Excellency **Mr. Nelidow** states that he wishes to take the floor, not in his capacity as first delegate of Russia, but as a member of the Conference. He explains that it is the task of the Conference not merely to lighten the burdens of war, but also to render wars less frequent. He desires to call the Commission's attention to the advantages and the disadvantages of the principle of immunity. History shows us that commercial interests have often prevented a declaration of war. Such interests are one of the most powerful restraining influences. His Excellency **Mr. NELIDOW** therefore wonders whether giving commerce complete security, freeing it, so to speak from all interest in the question, would not give war greater facilities.

His Excellency **Mr. A. Beernaert** thinks that what his Excellency **Mr. NELIDOW** has said shows still further that the discussion should not be closed now. Indeed, his address goes to the fundamental principles of the matter. It is not easy to see how what is true in war on land, which it is our aim to mitigate and to render more humane, should cease to be true as regards war at sea. Why prohibit in one case acts of violence and destruction which in another case are to be considered useful and even humane? These serious questions will assuredly be taken up again, and there are others that have scarcely been touched upon.

The **President** proposes that the discussion of the question be postponed to next Wednesday and repeats the request, which he has already made to the members of the Commission, that they present as early as possible the proposals which they desire to make.

The meeting adjourns at 4:45 o'clock.

¹ Vol. i, p. 58 [61].

[766-779]

Annex.

**ADDRESS DELIVERED BY HIS EXCELLENCY MR. CHOATE ON THE
IMMUNITY OF ENEMY PRIVATE PROPERTY AT SEA**

[See *ante*, pp. 752-767. In the French edition of the *Actes et documents* the French text of Mr. CHOATE's address is printed in the minutes of the second meeting of the Fourth Commission (June 28, 1907), pp. 750-764, and the English text appears as an annex, pp. 766-779.]

THIRD MEETING

JULY 5, 1907

His Excellency Mr. **Martens** presiding.

The meeting is opened at 2:55 o'clock.

The minutes of the second meeting are adopted.

The **President** reads a bulletin concerning the dates on which proposals must be filed.

His Excellency Mr. **Choate** remarks that by reason of the distance of its Government, the American delegation will not be in a position to file the important proposals which it desires to submit to the examination of the Conference and requests an extension of time, which is granted by the Commission.

The **President** declares the discussion of the proposal made by his Excellency Mr. **CHOATE**, in the name of the United States, on the inviolability of private property at sea open.¹

Mr. **de Beaufort** reads the following declaration:

The delegation of the Netherlands, gives its complete adhesion to the principle of the inviolability of private property at sea upheld at the meeting of June 29 by the honorable delegate of the United States, his Excellency Mr. **CHOATE**, in an address which will doubtless be considered one of the most remarkable documents emanating from the Conference.

The delegation will join in all efforts tending to cause this principle to be adopted in the domain of international legislation accepted by all the States, and if this object cannot now be attained, it will support all proposals which seem calculated to further the general application of this salutary principle.

His Excellency Mr. **Ruy Barbosa** takes the floor and says:

Mr. President, the declaration which I had the honor to make at the last meeting of this body was so unfortunate as not to be fully understood by those who busy themselves with penetrating the secrecy of our Commissions. There is no way of avoiding this evil with the system of closed doors, suggested to your wisdom by the spirit of prudence, your high sense of responsibility, and the delicacy of certain questions which we shall be called upon to consider.

[781] This system does not protect us from publicity; as a matter of fact, it compromises us. It is, in my opinion, a kind of superstition, noble indeed in its motives and well-intentioned, but pretty well disproved by experience. We shall be cured of this superstition perhaps if there are further Conferences, as is to be hoped for the sake of the peace and honor of civilization.

When my humble words reached the ears of the outside world, they became transformed and underwent versions which utterly twisted their meaning and

¹ Annex 10

gave them a character, a purpose, and a content absolutely at variance with what I had said with clearness and precision.

In their diversity of interpretation some declare that I have endeavored to defend the course of the United States by attempting to justify its opposition to the abolition of privateering in 1856, while others express their astonishment at hearing from the mouth of a representative of the most conservative Republic of South America, as they say, a profession of Pan Americanism in support of the American proposal.

Nothing could be more incorrect than these two versions, I might call them these two travesties of my little speech. You who deigned to listen to me are my witnesses; and I am sure that if the press had direct access to our meetings, we would not be bothered by these inaccurate accounts.

In the first place, gentlemen, I was not submitting a brief in behalf of the United States. That country has no need of such a thing. If it appears from my proposition that the United States did not subscribe to the articles of the Congress of Paris because of the inconsequence of an act which abolished privateering while it maintained the right of capture, it is not because I set out to prove this fact which is so manifest and elementary. The fact follows naturally from the circumstances narrated and the documents cited by me for the purpose of showing that Brazil fifty years ago officially and solemnly embraced the principle of the inviolability of private property at sea, both as regards privateering and as regards military seizure. The only purpose of my words, their declared and clear intention was not to flatter the United States by putting myself forward as its advocate, without its invitation and when there was no such necessity, to refute an accusation which nobody fathered, but, on the other hand, to prove the independence of our vote by showing that it is based upon ancient and genuine precedents in our international history.

Nor is it true that I have made here a profession of Pan Americanism in my adhesion, in the name of my Government, to the American proposal. The historical facts which I have outlined, citing documents in support of them, show a very different thing. What they show is, in the first place, that our approval of the principle opposed to maritime capture already has an international standing of half a century. In the second place, they show that this approval, contained in the Act of the Empire which has since been ratified by the Republic, was not a compliment to the North Americans, for Brazil, though she aligned herself against the right of capture, nevertheless freely signed the Declaration of Paris, which the United States had requested her not to do.

Moreover, Pan Americanism had not been born, or even conceived, at the time of the Congress of Paris. That Congress was held more than fifty years ago, and Pan Americanism is not even half as old as that. Therefore Pan Americanism could have no more to do with our condemnation of the right of capture than the lamb in the fable with the reproaches of the wolf.

Besides, the term Pan Americanism is not a bugbear to us. It will suffice to recall to those who are trying to make it a reproach to us that less than a [782] year ago the capital of Brazil was the meeting place of the Third Pan American International Conference, whose proceedings have been presented to this Conference through the instrumentality of the Brazilian Government.

But our Pan Americanism, that is to say, our claim of American independence of the political autonomy of our continent, far from lessening the cordiality of

our relations with our old friends in Europe, increases that cordiality by dissipating the prejudices, distrust, and fears which proceeded from the consciousness of our separation and isolation. The bonds which join us to North America do not weaken our devotion to our good friends on this continent, whence sprang our race, our language, our religion, our literature, our civilization, our prosperity.

Among these friendships—and I could mention illustrious and well-known examples—stands out that of England, whose policy of civilization, whose exemplary institutions and opulent resources aided us in our struggle for freedom, paved the way for our wealth, molded our earliest institutions, and taught our statesmen the forms and customs of liberty. But, although as regards this question of respecting maritime property in naval war the majority of Englishmen favor the maintenance of the right of capture, it is no less true that a great deal of public opinion and many of the highest authorities are emphatically for the rule of absolute inviolability.

In proof of this I need only mention the Lord Chancellor of England, that is to say, the most eminent personage of the English magistracy, the presiding officer of the House of Lords, who in a famous letter to the *Times*, written in October 1905, maintains, in the face of the interests of Great Britain, the immunity of private property during naval wars.

According to this British authority, already quoted by Mr. CHOATE, given the present conditions of commerce and war, the right of seizure would be powerless in the hands of the Queen of the Seas against her enemies, while in their hands it might be turned against her with incalculably disastrous results.

Is this language from the lips of Lord Chancellor LOREBURN, the First Magistrate of England, Pan Americanism? And if in Great Britain even among her most eminent men, men of the highest official responsibility, of the greatest political influence, of the most weighty professional authority, there are those who utter such views, who counsel this reform in the interest of the welfare of their country; if great European Powers like Germany, Austria, Italy, even Russia, have, since the Declaration of Paris of 1856, adopted it in their practice or propose to adopt it; if nearly all the jurists of this continent teach it and plead its cause, should we, when we hear such views expressed by the representatives of a State such as Brazil, which has always taken this position, consider it the expression of American predilections, of tendencies inconsistent with the ancient ties which link it with Europe, or the grateful friendship which it has so long felt for England?

It is fifty years since England abolished privateering and she has not suffered by having done so. In agreeing to the abolition of privateering, England abandoned a thing which English publicists and the British Government long defended as a right and a necessity. Those in Great Britain who concerned themselves with her dominion of the seas were sorry to see in the abolition of privateering the destruction of a force looked upon by them as the invincible weapon of their offensive operations.

For a number of years attempts have been made to reestablish privateering by keeping alive an agitation started and maintained by an association of [783] strategists. The Government has frequently been insistently urged to revoke its adhesion to the Declaration of Paris. The statesmen across the Channel, however, have always refused to take this backward step. In 1875 Sir WILLIAM HARCOURT, replying to the advocates of this retrograde movement,

recalled the energetic words of Lord CLARENDON. "This Declaration," said he, "would have been made at Paris whether England wished it or not. The determination of the other European Powers was so firm and so unanimous in that great Congress that this Declaration would inevitably have been adopted."

The arguments that are now put forth to show the value of the right of capture in naval war as a weapon of offense are no different and have no more force than those formerly made use of to exalt the military virtues of privateering. The one would seem to be no more necessary or efficacious than the other. According to the evidence of all authorities, we do not know of a single campaign in which the enemy's resistance was overcome as a result of the losses suffered by his merchant marine. In the wars in which the seizure of enemy merchant ships was most prevalent, from those of LOUIS XIV to those of the Revolution and of the Empire against Europe and that of the Federals against the Confederates in the United States, it was the military events, that is to say, the battles on land and sea between armed forces and between ships of war, which brought victory. By means of seizure little can be accomplished beyond the partial idleness of the merchant marine. Thus in 1870-1871 France captured only seventy-five German vessels, representing barely six million francs. Is not such a harvest insignificant in comparison with the great sacrifices imposed upon the nations by the necessity of protecting their merchant marine against seizure?

Conditions in the world to-day have shorn this method of warfare of its power. The trade of the enemy, if prevented from using its own vessels, will place itself under the protection of other merchant marines, under neutral flags which cover enemy goods, or by transferring its ships to neutral flags, unless it prefers to take advantage of the means of protection offered by insurance companies.

On the other hand, the development of railroads, whose lines encircle the globe, permits blockaded countries to increase their land trade, when occasion demands, and to obtain supplies from neighboring States. Therefore, if any nations are dangerously threatened by this double-edged weapon, it is the insular nations. In order to provide for the defense of their coasts, to prevent their being entirely cut off, and at the same time to protect their merchant marines, which are spread over all the navigable seas, they are compelled to have navies of colossal proportions. While their continental enemies, profiting by the resources of their neighbors, can be deprived of the use of the ocean without endangering their existence, States isolated by the sea are lost if this avenue is closed to them.

In such an event, which must be reckoned with because there is no invincible supremacy, the Lord Chancellor of Great Britain pointed out in his famous letter to the great London daily that England would find herself exposed to famine, that her industries would be reduced to idleness, and that she might find herself bereft of her immense transportation business, which is the greatest in the world and has been estimated by the Board of Trade at ninety million pounds sterling a year.

And that is not all. There is another aspect, which is not the least strange, nor the least serious. It is that in thinking to injure the enemy with weapons of this kind, we often injure ourselves. The matter becomes clear if we reflect on the modern rôle of insurance companies. There is a convincing example in the interesting brochure of Mr. HIRST, an English jurist, entitled, *Commerce [784] and Property in Naval Warfare*. In contemplating the picture of the

frightful earthquake, which destroyed half of the great American metropolis of the Pacific Coast, San Francisco, one might be disposed to believe that the losses occasioned by this catastrophe had to be met by the United States. Not at all; it was distant nations, two great commercial nations of Europe which to a large extent bore the burden. The great English insurance companies lost eight million and the German companies three million pounds sterling. Other companies—Canadian, Austrian, Swiss, Belgian—suffered also heavy losses.

Suppose it had been a question of the bombardment of a commercial port or the confiscation and destruction of enemy merchant ships by the English navy. British capital so widely invested in the insurance business would have been obliged to pay a large share of these losses apparently sustained by the enemy's commerce, and many neutral countries—Germany, Austria, Belgium, and Switzerland—would suffer considerable losses.

The truth is that commerce in our day has become essentially international and cosmopolitan. The evolution of the intercourse of nations has made of it a universal organization, which cannot be injured in one country without involving many others. Any injury done to it at any point in the civilized world is felt afar and can spread by invisible but no less real and deep channels to the most distant countries. Those great modern steamships, those immense trans-Atlantic liners of tens of thousands of tons' displacement, which plow through the ocean like floating cities or give the impression of the solid earth itself, each one representing millions, laden with treasure, carrying from one hemisphere to the other entire populations of travelers, those private fleets of hundreds upon hundreds of vessels, sailing under the flag of a corporation or joint stock company, this innumerable multitude of winged or engined monsters, whose sails or smoke are seen on all the seas and all the horizons of our planet, represent not only the States whose flags they fly, but the capital of the entire world, which flows from everywhere, fused, joined, and combined in the great navigation and insurance companies without question of nationality. Envelop them in the whirlwind of war, and it is impossible to foresee where the bolt that strikes them will really fall.

To resort to this deceptive weapon in the belief that it is a sure instrument against the enemy seems to us, therefore, to be the height of folly. Moreover, we deem it a flagrant wrong to crush the enemy by its means, when it is clearly others who suffer from its blows. Maritime trade nowadays is the expression of a community of all nationalities, which it mingles in its complex and delicate operations in an inextricable manner. It is impossible, therefore, to expose maritime property to the ravages of naval warfare without mixing enemies and friends in unseemly and irrational confusion.

But in removing commerce from the field of naval warfare, would we not be depriving ourselves of a factor that holds in check the number of such wars?

That is the question which was put to us at our last meeting, with all the prestige of his name, by the renowned statesman who presides over the Conference, elected by the votes of all its members.

Clear-sighted and devoted to the cause of humanity and justice as is the venerable President of the Conference, he did not, I presume, in putting this query, adopt the point of view which the question appears to imply. Probably he merely wanted to have the point argued, so that the rather curious [785] problem involved might be unraveled here. But it does not appear to be a difficult one, so evident is its absurdity.

The moment we try to see in the terror that war inspires a desirable means of impelling the classes most directly menaced by it to use their influence against it and look upon this interest as a useful obstacle in the way of frequent wars, we must proclaim as a social benefit the evils that war brings in its train and keep alive its maleficent character as the supreme preventive against the scourge. Then the more the classes of society whose heritage and existence are seriously affected; the greater the evils that hang over the nations threatened by battle; the more the arbitrariness, the violence, and the sophistry to envelop in the horrors of the struggle property, family, honor, all that makes life desirable to man and his country dear to the citizen; the more inhuman, devastating and monstrous wars become, the better satisfied we should be, because the more would we be insured against their recurrence.

But if this reasoning is correct (and no one can deny that it follows inevitably from the premise laid down) we have wandered far from the right road. Then the two sections of our program, pacification and the mitigation of war, are not a well-assorted couple. Then we cannot marry the desire for peace and the civilization of war. Then instead of lessening its hardships, or attenuating its horrors, as we are thinking of doing, we should, on the contrary, redouble our efforts to render war more destructive, more implacable, more hideous. Thus, by making it more truculent and formidable, we would cause it to be more greatly feared and thereby make its breaking out more difficult. Aggravate as much as possible the terror of these clashes, transform them into catastrophes, make every war lead to annihilation, and the nations will no longer fight. They will flee from such frightful encounters, as they would flee from earthquakes if they could foresee them.

In this case, therefore, humanity would urge us to retrace our footsteps, to undo the work of the Congress of Paris, of the Geneva Convention, of the Declaration of St. Petersburg and that of Brussels, of the First Hague Conference, and to return to the times when war was blind devastation, pitiless butchery, and lawless terror.

We would have been working against peace in establishing respect for a neutral flag and neutral goods, since we have thereby freed neutral commerce from the injuries of war, which that commerce would eagerly cooperate in attempting to avoid if it shared in the suffering therefrom. We would have been working against peace in forbidding barbarous cruelty, the massacre of prisoners and of innocent persons, in forbidding inhumanity toward the wounded, the shipwrecked and the sick, since the abolition of such savagery has immensely diminished the frightfulness of war, which by terrorizing society, the domestic hearth, the common people, the armed forces themselves, would have engendered in all these so many elements of resistance to the outbreak of this calamity. We have worked against peace in protecting the non-combatant population and in ensuring property against the harsh ferocity of pillage in war on land, instead of leaving the specter of destruction, of massacre, of fire and plunder in all their sinister violence to compel nations, crazed with fear, to refuse to consent to the waging of war.

The more you rid war of its terrifying aspect by making it more civilized, the more light-heartedly will we approach it. The more murderous, brutal, desolating you make it, the more careful will we be to avoid it. Let us, therefore, return to the ideal of barbarity and desolation; let us encourage inventive [786] genius to multiply its engines of murder, its methods of wholesale slaugh-

ter, its airships to sow dynamite and asphyxiation from on high, to fill the ocean with submarine ambushes. Place no restrictions upon the laying of submarine mines, strew them over the whole sea, let them drift where they will, carrying everywhere danger, fear and death. Extend to neutrals the risks, the surprises and the cruelties of war, and all the nations of the earth, all classes, all interests will join hands against it. There will be no more war, when war spells inevitable, universal ruin.

Do you draw back with horror before these consequences? They will follow surely and directly from the sophistical and fatal reasoning which would perpetuate the present system, under the pretext that its abolition, by freeing commerce from the dangers of naval war, would not leave it any reasons to impel it to prevent such wars.

The question presents only one criterion for civilized men: deprive war of all that is inhuman and useless in it, reduce it, from the standpoints of politics and military art and science, to what is really necessary to it. Is the right of capture essential to naval warfare? That is the question. To this question my country more than fifty years ago replied in the negative.

Such a solution seems to me the more opportune, since we see arising on all sides the knotty problem of the reduction of armaments. I do not know that it can be solved, but, in any event, if we seriously wish to proceed in that direction and if that aspiration also includes naval forces, the very first measure that presents itself as the easiest, because of its very nature and the adhesions which it has won, is the application of inviolability, which has already been recognized in the matter of neutral property, to enemy property in naval warfare.

Given the liability to capture of maritime property in naval warfare—a principle which is at present admitted—the navy is the ægis, the necessary protection of the merchant marine. The more numerous, important, and extensive this merchant marine is, the greater its vulnerability. The greater the surface exposed by the merchant marine, in proportion to its value and ubiquity, to the attacks of the enemy, the stronger must be the navy. This protecting function imposed upon the navy with respect to the merchant marine is therefore one of the principle causes of the exaggerated size of the naval fleets of the great modern Powers.

Relieve the navy of this burden, free it from the necessity of guarding the merchant marine, and you will have succeeded *ipso facto* in reducing to a great extent the naval budgets of the great Powers.

Consequently this would be a long step forward in lightening the burden of war which weighs down nations and which we would like to lessen; but we have heretofore not known how to do so—a natural step which does not seek advice from Utopian aspirations and needs no sanction to maintain it other than the very force of things, without any effort of invention, without losing sight of reality, without any demand of virtue. For we must never try to force from men or nations more than they can grant without doing violence to their nature or sacrificing their interests or their prejudices.

But, gentlemen, if the present Conference does not find itself in a position to take action entirely in accord with that requested by the delegation of the United States of America, by the out-and-out adoption of the pure and simple sanction of the principle of immunity of private property at sea; that is to say, by placing enemy property on the same footing as neutral property in this [787] regard, which is absolutely guaranteed by the Declaration of 1856, it should at least place enemy property on the high sea on the same footing as enemy

property on land, extending to the former the rules applicable to the latter, as contained in the second Convention of 1899.

This at least I do not believe can be refused now, even considering the reservations of the conservative mind, since it cannot be said of this intermediate solution that it disarms naval warfare. It is a concession which, side by side with naval war, bows to the same necessity which we recognize to the greatest possible extent by condemning the confiscation and pillage, the seizure and destruction of enemy private property during war on land.

Here is our project¹ to be considered only in case the American proposal is not accepted by this Conference:

PROPOSITION OF THE BRAZILIAN DELEGATION

With the aim of assimilating the status of private property at sea in naval warfare to that of private property on land, the delegation of Brazil proposes, in the event of the American proposition not being approved:

1. That the words "apart from cases governed by maritime law" be struck out of Article 53 of the Convention of July 29, 1899, with respect to the laws and customs of war on land.

2. That the following provision be added:

A. Articles 23, last paragraph, 28, 46, and 47 of the above-mentioned Convention apply likewise to war at sea.

B. When the captain of a vessel or of a belligerent fleet finds himself under the necessity of requisitioning, in the contingency provided for by Article 23, letter g, of the above-mentioned Convention—that is to say, in case it is necessary to destroy or to seize these goods on account of the imperative exigencies of war—an enemy's ship, its cargo or any portion thereof, the requisition shall be evidenced by the requisitioner by means of receipts given to the captain of the vessel that has been seized or whose goods have been seized, with all the details possible, in order to ensure the right of the interested parties to just compensation.

C. This clause applies to neutral goods, which may be on board enemy merchant ships that are requisitioned.

The captain of the vessel or of the war fleet, who has decided to requisition, is obliged to land, at one of the nearest ports, the officers and crew of the seized vessel, with sufficient funds to take them to the country to which they belong.

The President replies to his Excellency the first delegate of Brazil that the Commission saw nothing in his former speech other than an exposition of facts and arguments in the matter of the principle of the inviolability of private property at sea. It did not perceive in it any political considerations, which, moreover, are not within its province.

[788] His Excellency Sir Ernest Satow reads the following statement:

The proposal which is now before the Commission has for its object the abolition in future of the right which a belligerent has to capture and confiscate the merchant ships of the enemy and their cargoes, with the exception of contraband of war, but still maintaining the rights resulting from blockade.

His Majesty's Government has not failed to study this question with care and it has not sought to affect indifference to the serious arguments which may

¹ Annex 11.

be advanced in support of the principle of immunity. All that tends to restrict acts of war would seem at first sight to be a step forward on the way toward the abolition of war itself and to remove one of the reasons for the increase of naval and military expenditures. However admitting that this is so, this argument carried to its logical conclusion would seem to involve the abolition of the right of commercial blockade. Indeed, if commercial blockade were not to be discontinued, enemy vessels would be constantly exposed to search and seizure, and continual disputes would arise over the question as to what constitutes an effective blockade. It is evident that such disputes between belligerents would result in impelling that one of the combatants who might consider that he had cause for complaint because of the application of commercial blockade to one of his ports to cease to observe, wherever possible, the principles of the immunity of the merchant ships and the private property of the enemy. Consequently we consider it impossible to separate the question of immunity from capture from that of commercial blockade.

If a change should ever take place which would aid in bringing about a decrease of armaments, our Government might perhaps again look into the question. If, for example, the majority of nations showed themselves disposed to reduce their effective military and naval forces, so as to diminish appreciably the danger of the evils that war might bring to them and render war improbable by making aggression difficult; and if it should become evident that the conclusion of an agreement for the abolition of the right of capture would facilitate this change and that the absence of such an agreement would prevent the accomplishment thereof, His Majesty's Government would no doubt be disposed to admit that the benefits to be reaped by the change would outweigh all objections which might be raised thereto in principle.

In any event, in the present state of the world, it is impossible for His Majesty's Government to give its assent to a resolution, the real result of which would be to remove one of the reasons which contribute most powerfully to the maintenance of peace and which might tend to prolong hostilities after war had broken out.

However, although it is not a supporter of a project which would result in causing nations wholly to neglect the counsels of prudence, which ordinarily keep them from giving free rein to their warlike sentiments, His Majesty's Government is animated by the sincere desire to relieve neutrals, so far as possible, of the burdens of war. That is why it has charged us to ask the Conference to abolish contraband of war. We shall not fail a little later on to lay before the Commission the reasons for this request.

His Excellency Baron **Marschall von Bieberstein** takes the floor and says:

Germany has always been in sympathy with the idea of abolishing the right of capture, which affects merchant ships under an enemy flag. The facts of history prove the sincerity of these sentiments. Consequently the noble ideas that inspired the eloquent address of the first delegate of the United States of

America will not fail to be loudly echoed in Germany. It is clear, how-
[789] ever, that the categorical question propounded to us—"Should the right of capture be abolished or not?"—cannot be treated separately, when it forms only one part of a rather complex series of problems involved in the great principle of the inviolability of private property at sea in naval warfare. The proposal of the United States admits two exceptions:

1. The capture of a merchant ship is justified if it carries contraband.

2. The principle of inviolability ceases in cases where there has been a violation of blockade.

Now these two exceptions bring us to very much disputed ground. It will suffice to mention among other questions those of "relative contraband" and "continuous voyage." Only after the solution of a series of disputed points which hang upon the words "contraband" and "blockade" can we be sure that the abolition of the right of capture will become a reality, while by admitting exceptions of vague scope, which are consequently susceptible of arbitrary interpretation and application, we shall run the risk of reaching an undesirable result, which we proclaim to be the abolition of the right of capture, while in practice the system now in force will continue without any appreciable modification. It is for these reasons that I cannot, in spite of all my sympathy with the principle reply to the question with a simple "Yes." If we wish to give private property at sea more extensive protection by abolishing the right of capture, we must first come to an agreement upon certain questions, in order that the abolition may be effective and serve in an equitable manner the interests of all countries. Only then shall we be able to judge of the practical scope of this measure and definitely determine its position.

His Excellency Mr. **Tcharykow** makes the following statement:

The delegation of Russia desires to express its sympathetic respect for the broad, humanitarian views expressed in the speech of his Excellency Mr. CHOATE. The exposition of these views has been repeated on more than one occasion by the Government of the United States of America during the past century and more with admirable perseverance and eloquence. And yet the important declarations which we have heard show that before we are able to proceed to the adoption of the proposal on the program a great deal of preparatory work must be accomplished, a work of legal definitions and agreement, which is far from being completed. These circumstances, in our opinion, would seem to prove that the question is not ripe, and the delegation of Russia is therefore led to decide in favor of the continuance of the *status quo* now existing with regard to this matter.

His Excellency Mr. **Hagerup** takes the floor and says:

In the name of the delegation of Norway, I have the honor to declare that we adhere to the proposal of the delegation of the United States of America. In making this declaration I am well aware of the fact that I am speaking in the name of one of the smallest countries of Europe. But if we consider the material interests involved and if we measure these interests in tonnage, they are surpassed by those of only three countries. Although Norway, with its great tonnage, supports the American point of view, it is not because of a purely selfish interest. It is true that if a small State like ours were involved in a war, the existing principle with regard to hostile private property would be more ruinous to us than to a larger and richer State. We had such an experience early in the nineteenth century, but being a State that has enjoyed peace for more than one hundred years and having no other policy than that of neutrality, the probabilities are that in coming wars Norway will be among the neutrals. As far as neutrals are concerned, the present rule presents advantages, because in case of a [790] war in which the great Powers are involved it is evident that the merchant marines of neutral States will find much more employment. But in spite of this fact, the Norwegian Government has not hesitated to give its delegates the most formal instructions to support proposals for the protection of private

property, even enemy private property, on the sea. In doing so, it is merely continuing a policy which was inaugurated in the eighteenth century by the Kingdoms of the North in collaboration with Russia. Nevertheless I cannot vote for the proposal of the delegation of the United States without reservation, for this proposal, as it reads at present, settles also the question of contraband, which, according to the *questionnaire* submitted by our President, is reserved for a later discussion.

The PRESIDENT requests Mr. Fromageot to read the following letter from his Excellency Mr. CARLOS RODRÍGUEZ LARRETA :

The Argentine delegation accepts the texts proposed by the Italian delegation in reply to the first two queries of the *questionnaire*.

The Argentine delegation at the same time declares itself in favor of the continuance of the right of capture and of confiscation of merchant ships under an enemy flag.

His Excellency the Marquis de Soveral declares that he supports the opinion of the first delegate of Germany, that is to say, that the questions of blockade and contraband of war must be settled before examining that of the inviolability of private property of belligerents on the sea.

Mr. Santiago Pérez Triana takes the floor and says :

GENTLEMEN : I have the honor to address you in the name of the delegation of the Republic of Colombia ; it is therefore entirely natural that I should speak to you as an American. I use this term in the full amplitude of its generous historical and geographical compass, which belongs to it of right and covers the entire length and breadth of the continent : the North, the Center, the South, and the Islands of the American oceans.

I have arisen to consider the proposal submitted by his Excellency Mr. CHOATE, in the name of the delegation of the United States of America, concerning the inviolability of enemy private property at sea, according to which "the private property of all citizens of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure at sea by the armed vessels or military forces of the said Powers. However, this provision in no way implies the inviolability of vessels which may attempt to enter a port blockaded by the naval forces of the above-mentioned Powers, nor of the cargoes of the said vessels."

We have listened with interest and with the greatest of sympathy to Mr. CHOATE's eloquent speech, in which he has shown us so clearly and precisely that the humanitarian and civilized principle contained in the aforesaid proposal has constituted a uniform and persistent tradition in the policy of his country since the dawn of its independence, through all kinds of vicissitudes and changes, up to the present day.

Mr. CHOATE's address was conceived in the broad, humanitarian spirit of the time-honored state papers of the chancery and of the Presidents of the United States of America which spirit is itself the echo of the voice and of the sentiment of the entire nation in the glorious days of its liberation and its foundation.

In reading it, we recall names whose prestige forms an integral part of the historical glories of the United States, from PATRICK HENRY who, before independence had been won, asked for liberty or death ; BENJAMIN FRANKLIN, one of the fathers of American liberty ; ADAMS, MADISON, JEFFERSON, who [791] signed the Declaration of Independence ; the great Presidents of the first

period to MONROE; fiery orators like DANIEL WEBSTER, proclaiming the freedom of the Greeks in 1823, to CHARLES SUMNER and GARRISON, proclaiming the emancipation of the slaves, and LINCOLN and SEWARD defending human liberty and justice both within and without the country. It seemed to us Americans of Latin America, in listening to Mr. CHOATE, that there was passing over us a breath of the hurricane of those old days, which proclaimed justice and liberty, which came to us from the North, and which we thought had subsided. It is a rebirth. The United States, in again taking up its disinterested defense of the principles of justice and humanity, has resumed its historical rôle and we have all cause to congratulate ourselves that this is so.

If the question involved, as is the case with most of the questions submitted to the Second Peace Conference, merely doctrines and principles, and determining which are most in accord with justice and humanity, there would be practically no discussion. The abstract ideal, the supreme idea in all cases and the abstract adaptation of specific questions to that ideal are easy matters, with regard to which, except in certain exceptional cases, we could come to agreements without any difficulty. But it is not a matter of academic discussion seeking to discover and to determine the truth. We represent nations, that is to say, collective human organisms, which have their traditions, their aspirations, and their needs, their temperaments and their prejudices. It is our duty to take into account the requirements of these organisms, in the light of their life within their own boundaries and their relations with other nations. We are not called upon to undertake a work of analysis; we are called upon to undertake a work of adaptation. We are striving, so far as possible, to approach the ideal, but every one of us must base his decisions upon the needs and interests of the nation he represents.

It is for these reasons that while the doctrine contained in Mr. CHOATE'S proposal has our sympathy and good wishes, as expressing a noble, humanitarian aspiration, as delegates of Colombia we must inform the Conference that we do not adhere to and that our country will not subscribe to the proposal now under discussion, presented by the delegation of the United States of America.

I ask your indulgence for a few minutes more. I shall be brief, but I desire once for all to explain the general conditions and circumstances of my country, which, if I am not mistaken, are the same as those of many other countries of Latin America.

Colombia is a very extensive country, with a very small population. We are scarcely five million souls, and there is easily room for one hundred million. Our geographical position is exceptionally favorable: we have long coast lines on the Atlantic and the Pacific. We have a marvelous system of navigable rivers, whose vivifying waters spring from the vast distant plains at the foot of the Cordilleras and from the heart of endless forests. Our mountains are rich in minerals of all kinds; our valleys and our plains are fertile.

In the present stage of human development it is hardly probable that covetous eyes will be turned in our direction with the desire of political colonization, which would mean our suppression as a nation. We permit, we wish, and we encourage peaceable colonization, coming to us to spread its fertilizing waves in our midst, under the protection of our laws and institutions. Cost what it may, it is our duty to prevent any other kind of colonization.

[792] It is evident that for countries like ours, which have no merchant marine and which have scarcely any navy, but which in time of war can increase

its navy, there is everything to lose and nothing to gain in consenting to the abolition of the right of capture of enemy private property at sea.

It is evident that a Power possessing a navy and merchant marine, which it would be impossible to protect with absolute effectiveness in all the oceans, will be more disposed to make war on us if it knows that we have tied our hands by adopting Mr. CHOATE's proposal and that we shall not be able to make reprisals which might easily become very costly to it.

It is therefore as a measure of defense that we must preserve the right to the practice which Mr. CHOATE's resolution seeks to abolish. Mr. CHOATE has told us that it is an inheritance from ancient piracy. That is true, as it is likewise true that war is only organized murder. We retain these rights merely for times when normal conditions have ceased to exist. We cannot tie our hands for the very time when justice disappears and is replaced by violence, when piety hides her eyes and inexorable, brutal force reigns supreme.

Mr. CHOATE has told us, in the name of the illustrious President of the United States, that the nations should accept the humanitarian principle which he proposes, even if it means the sacrifice of some of their ambitions and interests. That is a noble appeal, proceeding from a lofty eminence. Happy man Mr. ROOSEVELT, if on stepping down from the presidential chair of the United States of America, which by its prestige, its power, and its potentiality is well worth the throne of kings and emperors! Happy man Mr. ROOSEVELT, if later on, at the sunset hour of a life full of energetic activity, his hand on his heart, he can declare before the world and before history that he has always followed the beautiful, humanitarian doctrine of respecting justice and humanity and the rights of the weak, as supreme ideals, even to the detriment of the political interests and national ambitions of his country!

In conclusion, gentlemen, we do not accept Mr. CHOATE's proposal because conditions and circumstances in our country do not permit us to indulge in this great luxury of the abstract principles of justice and humanity. As an individual, one can be an apostle and seek martyrdom; when one represents a country, it is his duty to defend its interests. In the present case it is a question of international policy, not of philanthropy.

The **President** remarks that a misunderstanding has perhaps slipped into the concluding remarks of the delegate from Colombia, since the Conference is not concerned with international policies.

Mr. Louis Renault reads the following declaration:

GENTLEMEN: Permit me to define the position that the French delegation intends to take on the question raised by the proposal of the delegation of the United States.

For various reasons proceeding from the nature and the origin of the proposal it could not fail to invite the serious attention of our Government. We recognize the weight of the reasons which have been invoked in its favor and which have been so authoritatively expounded by Mr. CHOATE. We are especially in sympathy with the idea of placing individuals, as far as possible, beyond the reach of the direct effects of war. If an agreement could be concluded on this point by all the States at interest, our cooperation would not be wanting.

Is such an agreement possible at the present moment? It does not seem, [793] judging from the statements that have been made, that the States here represented are disposed to consent forthwith to such an agreement. Moreover, as has been rightly stated, the problem is not a simple one; it is

essentially complex and the solution of the question in the manner advocated by the United States cannot be accepted even by the delegations which are heartily in favor of the principle, unless other more or less cognate questions like that of contraband of war and blockade are likewise settled in the manner they desire. When will these various questions be disposed of in a way acceptable to all? It is impossible to say. Furthermore, is the principle itself of the right of capture absolutely contrary to the modern conception of the law of war, and is it susceptible of certain adjustments which would justify its continuance until the time when it shall be possible, as it is desirable, to establish absolute respect for the rights of individuals? That is the question I shall now consider.

From the standpoint of the principles of law and equity, it would appear to be very simple to maintain that enemy private property should be respected in naval warfare, as it is in warfare on land, in accordance with the rules accepted by the First Peace Conference. War is waged by one State against another State; it should not be directed against individuals and should not have for its object enrichment at the expense of individuals. Such are the essential reasons which may be urged by the advocates of the abolition of the right of capture as still admitted in present practice.

These reasons are specious; they are not decisive, in our opinion, and the right of capture can very well be reconciled with the modern character of war.

In the first place, little argument is needed to show that respect for private property in land warfare was brought about by the interests of the belligerent themselves rather than by considerations of humanity and justice with regard to the inhabitants of the invaded or occupied country; that this respect does not prevent the invader from drawing largely upon the resources of the country by means of requisitions and contributions; that, finally, the very fact of occupation, with its various vexatious and onerous consequences, brings to bear upon the inhabitants and the sovereign of the occupied territory sufficient pressure to lead them to make peace.

In naval warfare the situation is not the same. There are indeed violent operations of war, just as on land, attacks by war-ships, bombardments of military ports, blockades more or less similar to sieges. That does not suffice; a belligerent must have the means of arresting the economic life of his adversary by hindering, or even by suppressing his commerce with the outside world. It is less a question of individuals, whose goods are seized than of the State to which they belong and which is injured by the action against the individuals.

The seizure of enemy merchant ships can be a disturbing factor in the economic life of the country to which they belong. It is therefore a powerful means of coercion, which it is advisable to make clear for two reasons. On the one hand, the fear of such a disturbance may turn from war, because of its interest in the maintenance of peace, a considerable portion of the population, which might look with more or less indifference upon the possibility of a conflict involving only military operations properly so called. On the other hand, if war, nevertheless, breaks out, the confusion to commerce, the well-nigh complete interruption of maritime commercial relations with its consequences to the prosperity of the country, the rise in cost of the necessities of life would bring pressure to bear for the conclusion of peace. It is therefore an effective means of coercion, and we cannot say that it is especially cruel.

[794] The capture of merchant ships is not carried on under the same conditions as formerly. It used to hit individuals, owners or shippers, and it

constituted real booty for the captors, whether they were, as was frequently the case, privateers, or ships of war. A State, by itself or through its agents, grew rich at the expense of the despoiled individuals. The State to which the latter belonged suffered only indirectly, because it could live on the resources of its soil. The situation has greatly changed. Navigation plays a more and more important part in the economic life of most countries, an essential part in the life of some. Disturbance of this navigation has therefore an immediate effect upon the entire State, whose social functioning may be upset. Besides, merchant ships are now of greater dimensions than formerly and they are very often readily convertible into auxiliary cruisers. Consequently their capture deprives the States whose flag they fly of resources which may be directly utilized in war; it is a real means of defense for the captor State. The pecuniary consequences do not appear at first sight. Finally, the loss no longer falls upon specific individuals; it falls upon big corporations, which alone possess the necessary capital for the construction and equipment of the huge vessels which are to-day indispensable in the vast operations of international commerce. The loss is shared by a large number of stockholders or bondholders of the companies involved. It is not of the disastrous kind where the loss falls upon an individual whose property thus confiscated may constitute his entire fortune.

In order that the maintenance of the right of capture may preserve its character as a means of coercion, to be made use of by one belligerent against the other, and be shorn of its compromising likeness to the former right of booty, two conditions are necessary, which I shall venture to point out, although they belong in principle to the province of municipal law, because the fulfillment of these conditions would permit States in favor of the present positive law to free themselves of certain criticisms.

In the first place, all thought of gain must be absent from the minds of the agents of the State making the capture. It is not well for them to have a pecuniary interest in undertaking this or that hostile operation. It is therefore desirable that the system of sharing in the prizes, which still exists in most navies, should be discontinued. The question will be examined here only from the standpoint of enemy prizes. I might add that it would be still more desirable with regard to neutral prizes, where there is ordinarily more room for doubt and where the decision of the cruiser should not be suspected of having been influenced by the lure of gain. The seizure of an enemy vessel or of a neutral vessel should be nothing more than an operation in the interest of the State. It is the performance of a duty, which is not to be pecuniarily remunerated any more than the performance of other duties toward the State. In this respect the navy should be treated like the army.

On the other hand, it is in the general interest of the State, as well as in their own that the owners and charterers of captured vessels continued their operations in spite of war. It would not therefore be just for them alone to suffer the consequences of the capture. Therefore the idea that the State as a whole should suffer the injurious consequences of war, not only so far as they affect the State and its departments directly, but also in so far as they affect individuals, is growing stronger and stronger. We may differ as to the method of putting it into effect, but there is scarcely any question about the principle itself.

[795] If the foregoing considerations are, as we believe them to be, correct, the right of capture would appear to be a measure taken by one belligerent State against another belligerent State, such measure being part of the operations

by means of which a State endeavors to reduce its adversary to terms and not being in itself of a specially rigorous character. There is not therefore sufficient reason, in our opinion, for relinquishing this right, so long as the necessary agreement, to which we referred at the beginning of our remarks and in bringing about which we are ready to cooperate, has not been reached.

His Excellency Mr. Uriah M. Rose reads the following address:

Mr. PRESIDENT: Much has been said in the speeches we have heard about the rights of those who effect a capture, the rights of belligerents, and there has been an attempt to show that their rights are approximately, if not entirely, equal to their strength; but no one has attempted to define what might be the rights of individuals who have property on the seas in time of war. We would be tempted to infer that the rights of the latter to the property which they have on the seas are an absolutely negligible quantity.

It was just one hundred years ago that Lord BROUGHAM said:

The private property of pacific and industrious individuals seems to be protected, and except in the single case of maritime capture, it is spared accordingly by the general usage of all modern nations. No army now plunders unarmed individuals ashore, except for the purpose of providing for its own subsistence. And the laws of war are thought to be violated by the seizure of private property for the sake of gain, even within the limits of the hostile territory. It is not easy at first sight to discover why this humane and enlightened policy should still be excluded from the scenes of maritime hostility, or why the plunder of industrious merchants, which is thought disgraceful on land, should still be accounted honorable at sea.

Another distinguished writer has said: "There is no doubt that the widespread irritation occasioned by the capture of private property at sea as much as on land is one of the main provocatives of enduring national hatred."

His Excellency Mr. CHOATE has quoted many statements to the same effect emanating from statesmen, from jurists of the highest reputation and of different nationalities. I shall not mention the treaties in which the principle which we are supporting has been introduced.

At the very beginning of our labors his Excellency Mr. MARTENS said with great point and wisdom in his opening address: "We must now do for naval warfare what the Second Commission of the last Peace Conference did for land warfare: we must establish the principles which shall aim to prevent disputes and misunderstandings."

That is precisely what we are trying to do in the project now under discussion—that is to say, we are endeavoring to give uniformity to the humanitarian rules of war, so designated because they rest upon moral principles, and thereby to succeed in protecting the recognized rights of non-combatants on the sea as well as on land.

The humanitarian rule of inviolability in time of war of property on land belonging to innocent individuals, except in the case of contraband or of military necessity, is, it is true, of comparatively recent origin. However, based as it is on universally recognized principles, it is to-day so firmly imbedded in the public conscience and in international law that it is not contested either by our honorable opponents or by any one whatsoever. And, indeed, it is difficult to understand why the same rule should not be applied under the same conditions to the property of the same individuals when it is on the sea. Centuries

[796] ago CICERO declared that the natural law of justice is the same in Rome as it is in Athens and everywhere else—words which have been quoted with approval by all the most distinguished modern writers on the law of nations. Justice does not change with latitude or longitude; on the mountain or on the plain; with the weather or the seasons; and it does not stop, like the continents, at the edge of the sea. Therefore, to say that principles of natural justice, whose sovereignty is recognized on land, are not applicable on the sea, would appear to be an anomaly in practice and a veritable paradox as an argument.

The theory propounded to the effect that wars become less frequent and shorter in proportion as they become more cruel and more unjustifiable was long ago rejected. That theory is sister to that which holds that laws are effective in proportion to the terror which they inspire. In England toward the end of the eighteenth century the law made the theft of an article valued at 3 shillings or more a capital offense and punished with death anyone guilty of 160 such thefts. The result was that if a man in a moment of weakness made himself guilty of a slight misdemeanor, knowing that by the terms of the law his life was in jeopardy and that there was no remedy for him, he grew desperate and became a professional highwayman. He gathered around him a group of malefactors, took to the highway or the forest, and waged against society a war in which the principle of the inviolability of private property lost all its rights. And if in the course of his criminal career one of these brigands was caught and made to suffer the penalty of the law, instead of having to punish him for a single crime, there were thousands of offenses for him to expiate. Thus the law ran counter to the object it aimed at and increased the number of malefactors. The executioner continued to swing his ax, but the crimes went on multiplying and the courts were powerless to compel respect for the majesty of the law.

It is the same with cruelty and injustice in the prosecution of war on land or on the sea; they inevitably tend to make wars more frequent and longer. No doubt a conqueror, after having given everything indiscriminately over to pillage, after having massacred entire populations, after having laid waste the surrounding country, may at times call the result peace; but it is not the kind of peace that we care for.

At the beginning of every war there are usually on both sides a war party and a peace party. Every arbitrary act of injustice committed by either of the belligerents naturally causes resentment on the other side, which works to the advantage of the war party and to the detriment of the peace party. Repeated acts of injustice result in uniting the entire population in a sentiment favoring war and all hope of peace languishes and dies out in proportion to the resentment aroused.

In time of intense excitement every man feels himself grow to the proportions of a hero. When we have seen injustice, insults, and indignities heaped upon us, there comes a time when the voice of purely material interests ceases to be heard. Exasperated man cries vengeance and every individual is ready to say: "You can burn my house and devastate my field, but I shall no longer cravenly submit to your injustice and your repeated insults; I shall risk my life in an effort to pay back with interest the revolting treatment which I have received from you." When warlike sentiments have reached this point, it is not easy to allay and silence them with soft words. In such circumstances even the most reasonable offers of conciliation are often rejected with scorn and indig-

nation, and war is waged with its sanguinary consequences to the point of complete exhaustion.

[797] We could prove by numerous examples that injustice and cruelty by no means make wars less frequent.

In ancient times wars were much more cruel and unjust than in our day; they were also much more frequent than at present. To mention a comparatively recent period, LOUIS XIV and his minister Louvois waged war with atrocious barbarism. In the Netherlands they burned more than one hundred cities and towns; they ravaged with fire and sword the rich and populous Palatinate and left behind them nothing but smoking ruins; and yet the reign of LOUIS XIV was an uninterrupted series of wars, which did not end until the monarch finally succumbed before the efforts of the coalition which had formed against him because of the persistent cruelty with which he waged all these wars.

Do confiscations and cruelty shorten war? Let the nation whose generous hospitality we are now enjoying answer. The war between Spain and the Netherlands was conducted—by one side at least—with a fierce and savage inhumanity almost without parallel, and yet no war in modern times has lasted so long.

But we are told, if the opposite principle to the one I am upholding cannot be justified on moral grounds, it can be justified by political considerations, for the danger of seizure which private property runs at sea forces the commercial classes to bring all their influence to bear in favor of peace and thereby tends to make wars less frequent and long.

This argument likewise seems to us fallacious. War and peace are not made behind the counters of merchants nor in chambers of commerce. Merchants are not a class apart of clever politicians. Properly speaking, there are no longer commercial nations in the world, such as were formerly Genoa and Venice, nations that had practically no manufactures or agriculture and whose whole national existence depended exclusively upon their commerce. In their time all ships were built of wood, and merchant ships could be easily and quickly converted into ships of war; and the owner of a privateer might hope to grow rich by capturing the vessels and cargoes of the enemy in a kind of war which was not very different from piracy. Wars to-day do not offer the same opportunities to traders or capitalists. However liberal the rules of war are to the merchant, he will always be inclined toward peace, if for no other reason at any rate because war, by interrupting communications, blockading ports, and withdrawing great numbers of workers from productive labor, necessarily paralyzes business, so that merchants are the last people in the world to encourage a warlike spirit. Even were it otherwise as formerly, the group of merchants with interests on the sea, although a numerous and important class, would be none the less submerged by the other classes engaged in manufacturing, in agriculture, in public works, in mining, and other occupations, so that it is practically certain that merchants will never be an important factor in arousing sentiments that may bring on war. By the very nature of their occupations, merchants are the staunchest allies of peace. There is no need of turning them against war, because to them war means loss and ruin; and yet the rule now in force punishes the very class which is constitutionally in favor of peace and not of war. Among the many services which commerce renders humanity, one of the most important is that it tends to unite the nations through the bonds of a community of interests and of friendship, and thus prevents the frequent occurrence of useless wars. To accuse merchants of promoting discord and encouraging war is as unjust

[798] as the principle in the interest of which this gratuitous accusation is framed. This is adding the iniquity of duplicity and fraud to robbery by an armed thief; it is justifying the wolf's reason in the fable of "The Wolf and the Lamb."

In 1809 when war was on the point of breaking out between the United States and Great Britain, Congress, having laid a preliminary embargo on commerce, all the merchants who had interests on the sea arose as one man, organized in the interest of peace, and denounced all military preparations with the greatest vehemence and the utmost energy.

Nevertheless war broke out and ran its course, not at the instigation of the merchants, but in spite of their remonstrances.

But even if it were true that merchants are prone to promote war rather than peace, it is difficult to understand how that would justify the seizure of goods belonging to an individual in no way responsible for the opinions or conduct of the owner of the ship carrying the cargo, whom he has probably never seen; or why that owner himself should be put in jeopardy for sentiments which he has perhaps never professed.

If we admit that a severe policy and the higher sentiment of duty require that this system of rapine at sea be maintained, in order to keep the merchant marine within the bounds of respect, it would seem that the same preventive measure should be adopted with regard to merchants trading on land, and thus all merchants would find themselves brought into the orthodox flock not only of the friends of peace—friends do I call them?—the mad, fanatical partisans of peace, always ready to take up arms and fight even with their own countrymen to ensure to them the benefit of peace. An international agreement does not seem to us to lend itself to the defense of a doctrine which has such difficulty in reaching a logical conclusion.

Even if our point of view were erroneous, we should none the less persist in our belief that the ground taken by our opponents is subject to the gravest criticism. We are not here to defend the practice of privateering, but privateering is undoubtedly an excellent means of defense in the hands of a weak State against a strong State. During the war of 1812 between England and the United States, English commerce suffered greater losses from American privateers than it has suffered in any other war. In our Civil War the Confederate States had no navy, and yet, as his Excellency Mr. CHOATE has told us, the armed privateers of SEMMES and his lieutenants swept American commerce from the seas. Nothing spreads more consternation among a merchant marine than the knowledge that a FRANCIS DRAKE, a PAUL JONES, or an Admiral SEMMES is cruising on the high seas or lying in wait in some bay or other remote quarter. Privateering was abolished by the Treaty of Paris, and our opponents justify this measure by saying that it is humane and just; but if, as they say, their aim is to intimidate the merchant class so as to turn it against war, why do they abandon the efficacious means which they had in privateering for a method insignificant and of very limited scope, which permits the capture now and then of a bale of merchandise belonging to innocent non-combatants, and that without any advantage to the operations of the land and sea forces, and of no other use than to put a few pieces of money into the pockets of the person making the capture, when the goods are sold. Why lay aside a most effective weapon and take up one which is powerless and ineffective? In principle the policy which our opponents are defending leads to the same inconsistency which we have hitherto

encountered. It abolishes privateering, but establishes and sanctions the principle of the seizure of private property at sea, the very principle upon which privateering is founded and in whose name our opponents in the present discussion condemn privateering. It seems to us needless to bring forward arguments to prove that what is unjust on land cannot be just on the sea, or that if the capture of private property by privateers regularly commissioned by the Government is bad in principle and nefarious in practice, it cannot be just and right when it is carried on by a regularly equipped and commissioned vessel belonging to the State. The immorality of the act does not depend upon the agent, but upon the nature of the act itself. The Athenians would not listen to a plan which was represented to them as of great advantage to Athens, when they were informed that it was also very unjust. In acting thus they did not quibble with words; they did not pretend that natural law, which with men and nations is as immutable as the physical laws that rule the universe, varies according to time and place.

The doctrine that we are upholding is not a doctrine peculiar to America; it is the doctrine of mankind in general. It has been upheld and is still upheld by European nations, by their jurists, by their statesmen, and we are merely defending what they have energetically defended before us. An editor of the *London News* publishes in the July first number of that paper a very able and thoughtful article which reviews the admirable address delivered by Mr. CHOATE before this Commission. Speaking of the opposition to the principle which we are defending, the writer says that it "runs close upon the absurd" and states that: "If this principle [of the seizure of private property] were accepted and logically applied, the Conference would indeed be on the road, not to developing the existing rules which govern war, but to demolishing them."

I may add that it would be shouldering the responsibility of a principle which would destroy a large part of the good that it has hitherto accomplished.

We are by no means surprised that the principle we are supporting is meeting with vigorous opposition; that we are told that before it can be taken up various knotty questions must first be discussed and settled; that the problem raised by this question is not yet ripe; that it should be postponed to a more favorable time; that it is absolutely necessary that the question of contraband especially be fully discussed first of all, although what we are advocating has nothing to do with contraband, since it concerns private property and not contraband, whatever rules may be laid down with regard to the latter.

We are neither downcast nor discouraged by the considerations that have been set forth with a view to obtaining a delay. All reforms have had to reckon not only with the opposition of the ignorant and the perverse, but also with that of men in other respects wise and good. In the present case the solemn, striking fact is that the principle which formerly justified outrageous and unrestricted pillaging of land, which is to-day condemned by humanity and common decency, has been relegated to the sea, like the Gaderine swine: "*They ain't no ten commandments.*"

Like those swine, it has there intrenched itself and found a sanctuary.

We hear to-day for the first time that the rule which prohibits pillaging on land was not established chiefly for reasons of humanity, but in order to prevent lack of discipline in the soldier. We are not ignorant of the fact that a cynical philosophy holds that our best actions have their origin in selfish motives; but

we are by no means disposed to accept a theory so revolting, which robs virtue of all that ennobles it and deprives it of what is often its last and only reward: the glory of a disinterested act. (*Applause.*)

[800] His Excellency Sir Edward Fry expresses himself as follows:

I request the floor merely to touch upon one point in our debates. The American delegate whom we have just heard with such interest has had much to say about the cruelty in the exercise of the right of capturing private property. In my opinion, this is a mistake. It is true that in all war operations there is something of the barbarous, but of all its operations there is none so humane as the exercise of this right. Consider, I beg you, these two cases: the one the capture of a merchant ship at sea, the other the operations of a hostile army. In the first case you see an instance of *force majeure* against which it is impossible to struggle. No one is killed, no one is even wounded; it is a peaceful proceeding. In the other case what do you see? You see the country devastated, cattle destroyed, houses burned, women and children fleeing before the enemy soldiers, perhaps horrors which I dare not mention. To complain therefore of the capture of merchant ships at sea and not to prohibit war on land is to choose the greater of two evils.

His Excellency Mr. Cléon Rizo Rangabé makes the following statement:

Although it appears from the exchange of views that has taken place that the problem propounded by the United States of America on the subject of the inviolability of private property in naval war cannot be finally solved by this Conference in accordance with the American proposal, the Hellenic delegation, desiring to indicate the position which the Royal Government would be willing to take with a view to a later agreement, wishes to make known that it joins in the Declaration made by his Excellency Mr. DE BEAUFORT at the opening of this meeting in the name of the Netherlands.

His Excellency Mr. Beernaert remarks that the numerous interesting declarations require an answer, but as he is fatigued, he asks the Commission to be permitted to make his observations at a later occasion if this discussion continues.

His Excellency Mr. Léon Bourgeois observes that the question at present under discussion by the Fourth Commission is one of the most important submitted to the Conference. At its last meeting the Commission heard absolute argument; to-day it has heard what might be called relative arguments. It has been informed that the question of the inviolability of private property at sea is dependent upon other questions, the questions raised by the blockade of the ports of belligerents and the seizure of contraband of war. It has been shown by the different systems proposed for adoption that it is possible to humanize naval warfare in this regard. Does not the Commission think, therefore, that this question deserves to have one more meeting devoted to its discussion? (*General assent.*)

The President again refers to the requirement that the delegates file before July 7 the proposals which they desire to submit to the Conference and dwells upon the advisability of the members of the Conference confining within certain limits the speeches which they desire to make.

His Excellency Mr. Nelidow recalls that at the last plenary meeting the Conference expressed the wish that the speeches in future be not too lengthy.

On the motion of the President, the continuation of the debate is set for Wednesday, July 10, at 10:30 o'clock.

The meeting adjourns at 5 o'clock.

FOURTH MEETING

JULY 10, 1907

His Excellency Mr. Martens presiding.

The meeting opens at 10:55 o'clock.

The minutes of the third meeting are adopted.

The President states that in accordance with the call received by the delegates the Commission is to continue the discussion of the principle of the inviolability of private property at sea, as set forth in the proposal of the delegation of the United States of America.¹

The PRESIDENT gives the floor to His Excellency Mr. A. Beernaert, who speaks as follows:

GENTLEMEN: It is not without reason that it seemed to me inadvisable to close this important debate after his Excellency Mr. CHOATE's address. The speech of our honorable colleague from the United States was a stirring one and covered the whole ground. He left nothing in darkness, either as regards the arguments in favor of the inviolability of property at sea or as regards the savants and statesmen who have expounded and defended this thesis, or as regards the already numerous cases where belligerent States have in fact put it in practice, thus giving an example which ought to become more general.

But it seemed to me that this speech ought not to remain unanswered and unsupplemented. Those who do not share his Excellency Mr. CHOATE's opinion ought, it would seem, to tell us why, at least briefly, and it was to be hoped that the great Powers would make known their sentiments. Our meeting of July 5 was, as a matter of fact, of great interest. Mr. CHOATE announced proposals which we have not yet seen, but which he characterized as important. The delegations of Norway, Greece, Brazil, and the Netherlands adhered to the view of the United States, and his Excellency Mr. BARBOSA indicated alternative proposals of a less absolute character, which are well worth considering and which would place private property in naval warfare on the same footing as private property on land.

If, on the other hand, the great European Powers—Germany, England, France, and Russia declared themselves in favor of maintaining the *status quo*, they did so without enthusiasm, regretfully, as it were, because of temporary considerations, and they let it be inferred that an understanding would not be [802] impossible by any means, if other difficulties could be adjusted by common agreement, for example, in the matter of blockade and contraband of war. It would seem, therefore, that we may have confidence in the future, but in the present state of affairs the suppression of capture cannot be secured, and it would be puerile to insist upon it. That is not what I wish to do. But if we

¹ Annex 10.

must resign ourselves to having absolutely different rules cover private property in warfare on land from those that cover it at sea, if the same goods are to continue to be respected or to be liable to confiscation according as they are on board a vessel or still on the dock waiting to be loaded, may we not make an effort toward the accomplishment of relative progress? His Excellency Count TORNIELLI was the first to speak of alternative proposals, to which his Government would willingly adhere for lack of better. The Danish delegation made a similar declaration. We have the Brazilian proposals and we also are ready to support this phase of the question, since it seems to be the only practical one for the moment.

We perceive but few alternative proposals other than those substituting seizure or sequestration for confiscation through capture. Notable authors, like LORIMER, in the *Revue de droit international* for 1875, HEFFTER, *Droit international de l'Europe*, PILLET, *Droit de la guerre*, recommend this half-way measure, and it would perhaps satisfy those who believe that war at sea cannot produce its full effect except by annoying or even interrupting enemy commerce. This object would be attained by apprehending vessels and sequestering them, together with all or part of their cargo. It is true that private individuals would be seriously effected, perhaps ruined, but they would at least be compensated on the conclusion of peace, and the settlement of such compensation would be one of the conditions of the treaty.

Even outside of such a solution, there are in the present situation certain things which really cannot be continued. Since all are agreed that war is between State and State, and not against individuals, on what grounds can it be maintained that seamen on board a merchant ship should be considered prisoners of war and treated as such? In what respect are these brave men, who peaceably pursue their calling, belligerents? How can they, without having taken part even indirectly in hostilities, be treated as combatants and held captive until the end of the war?

And furthermore, is it admissible that a war-ship which encounters a defenseless merchant ship has the right to sink it, if it has any reason for not taking over its prize, and to torpedo it without warning?

Gentlemen, if the views which I have just expressed should meet with a favorable response among you, the Belgian delegation also might lay proposals before you in the sense that I have indicated. My colleagues and I have already prepared such proposals.

If an agreement could thus be established, we should, I am sure, all have more than one reason for being satisfied. We constitute an assembly without precedent. Never before in the history of the world have the representatives of all the civilized nations gathered together without any idea of advantage to themselves and even without any ulterior motive, but solely for the common good.

But allow one of your deans in point of age to say to you that the greater and the more unprecedented our rôle, the more is expected of us. Public opinion is listening to us and watching us, and there is not an assembly nowadays but must sit with its windows open and listen to the noises outside.

The First Hague Conference was the subject of much criticism, and yet it has to its credit a really progressive codification of the laws and customs of war and the sanction of mediation and arbitration.

[803] This second assembly should reach results at least of equal importance, and war at sea would seem to furnish us with our opportunity. Mr.

MARTENS said to us at the begining of our labors: "We must now do for naval warfare what the Second Commission of the last Conference did for land warfare."

Well, what can we and what shall we do?

As regards combatants, war at sea presents other terrors than those of war on land.

A torpedo-boat or a submarine can annihilate in a few moments a magnificent vessel representing an enormous outlay and a thousand lives. In 1899 Russia proposed that the employment of such engines of destruction be given up, just as the poisoning of arms and of springs has been prohibited, and most of the Powers seemed ready to adhere to the proposal provided it were accepted unanimously. But unfortunately I do not now see any indication among us of such an idea. We shall probably prohibit merely the employment of those floating mines, whose ravages as regards neutrals and fishermen have been described to us by the first delegate of China.

This will indeed be considerable progress; but is it sufficient? Shall we thus be able to satisfy that dread sovereign called public opinion? I do not think so, and that is why I venture to recommend to the attention of the assembly the adoption of broad regulations with respect to neutrals and at least a partial sanction of the law of private property at sea.

His Excellency the Honorable **John W. Foster** then takes the floor and says:

The imperial delegation of China desires to lend its support to the pending proposal which the first delegate of the United States has presented and upheld with so much skill. In doing so the delegation of China considers that it is merely giving expression to the wish to encourage all measures tending toward peace, which has for centuries animated the Government of China and which still disposes it to welcome any proposal offering guarantees of more extensive freedom to peaceful commerce.

I have listened with great interest and profit to the discussion to which the pending proposal has given rise. If I understand clearly the position of the opponents of the proposal, they contend that as long as private property is liable to seizure the nations will hesitate to go to war because of the disastrous consequences which might result therefrom to their maritime commerce. Rather than see their merchant marines swept from the sea and their foreign trade destroyed, it is asserted that the Governments will sincerely endeavor to discover some other method than that of an appeal to arms for the settlement of their differences.

If this Conference of nations allows itself to be influenced by the argument that private property on the high seas should not be exempt from capture because the fear of its destruction acts as a check upon war, why would it not be equally applicable to a number of reforms in the rules of war adopted for the purpose of improving the conditions of maritime commerce, which have so greatly contributed to the improvement of international relations during the past half century? Why should not the four rules of the Declaration of the Congress of Paris of 1856 be abrogated? Why should we not partially undo the work of the Peace Conference of 1899? Finally, why should the Second Peace Conference be forced to give its attention daily to the study of projects for a prize court, for restricting the practice of the right of search, for the regularization or abolition of [804] contraband, of the privileges to be given maritime commerce on the outbreak of hostilities, for more definite regulations in the matter of blockade,

of submarine mines, and many other questions, all contemplating a more extensive protection and immunity of peaceful commerce on the ocean?

The second argument against the proposal before us is advanced by the representatives of Governments which for more than one hundred years have been active advocates of the immunity of private property at sea, but who now doubt whether this is an opportune time to put these principles into operation. The considerations upon which this point of view is grounded are of various kinds, but the most important reason advanced is the assertion that the immunity of private property will necessitate changes in the rules in force regarding contraband, blockade, and other practices, and that it would be necessary first to reach an agreement with respect to these questions. I do not understand from the exposition which Mr. CHOATE has made of his proposal that he expects to see it adopted in the form of treaty stipulations *in ipsissimis verbis*, regardless of the subjects which are complementary thereto and which are under discussion or soon will be discussed. I look upon the proposal as being an expression of the opinion of the nations on a long-debated maritime question of the utmost importance; and I believe that if, as I hope, it is adopted by the Conference, an effort should be made to harmonize it with the subjects which are complementary thereto in such a way as to secure an agreement on treaty stipulations.

The commerce of the world has undergone a great change since the laws covering neutrality and contraband came into being a century or two ago. In those days over-sea trade was infinitesimal. At present statisticians inform us that it has attained such gigantic proportions that it is difficult to calculate its immense value. The seas have become the highways of the nations, and it would not be reasonable to expect this immense traffic of all the nations to consent much longer to allow itself to be interrupted and demoralized because two nations will not listen to reason but insist upon settling their differences by means of war, whose results are merely the triumph of brute strength.

Fifty years ago the great Powers of Europe took an important step toward the improvement of the situation of maritime commerce. The four rules of Paris of 1856 were hailed as marking considerable progress in the advance of civilization and were accepted by all nations in their practice. It was for the purpose of rendering war less disastrous to maritime commerce and of giving greater freedom on the seas to international trade during the progress of hostilities that it was agreed that neutral goods on enemy vessels and enemy goods on neutral vessels would be exempt from capture; that the depredations of privateers on defenseless vessels would not be tolerated; and that foreign trade would not be excluded from the ports of belligerents except in the case of a real and effective blockade.

It is likewise within the power of the present Conference—so superior in its representation of the enlightened sentiments of the whole world—to distinguish itself, as did the Congress of Paris, by adopting still more advanced measures for the improvement of conditions with respect to maritime commerce. The proposal under discussion for the immunity of private property at sea, the abandonment of the principle of contraband, the establishment of a court of appeal for prizes, the regulations concerning submarine mines, and other restrictions imposed upon belligerents on the high seas are entirely in accord with the spirit of reform in maritime matters inaugurated by the Congress of Paris half a century [805] ago; and their adoption would in itself justify the present assembly of

the nations, even if no other measure for the promotion of peace should emanate from it.

We can claim with assurance that at the present time peace is the normal state of the nations and that war is their abnormal condition. And if this be so, it is perfectly proper to insist that the nations which do not wish to observe the precepts of reason but obey a warlike impulse must molest as little as possible the commerce and industries of peaceful nations, and that so far as maritime trade is concerned, their operations must be confined to the territorial waters of the belligerents.

The pending proposal to which I have alluded will have a tendency to bring on this improvement, so greatly to be desired in maritime matters. It will not be possible perhaps to secure the adoption of all these improvements in the present Conference; but I foresee the day when the right of search will be abolished, when the suppression of contraband will be permitted only in the territorial waters of belligerents, and when the high seas will be open to the peaceful commerce of the whole world and protected from the vexatious proceedings of warring Powers.

His Excellency Mr. **Hammarskjöld** makes known the views of the delegation of Sweden as follows:

At the time of the formation of the Leagues of Armed Neutrality, one hundred years ago, Sweden helped to establish measures tending to protect private property at sea and to diminish the obstacles in the way of maritime commerce. With the same end in view, the delegation of Sweden is of the opinion that there is not sufficient reason to continue in the matter of naval warfare any *fundamental* rules other than those which already govern war on land. We share the point of view which seems chiefly to have inspired the American proposal, but we do not overlook the difficulties in the way of an immediate *complete* establishment of this principle.

His Excellency Mr. **Ruy Barbosa** makes the following remarks with regard to the order in which the questions should be discussed:

At the preceding meeting, when all the great Powers and a number of the others were heard expressing their desires on the treatment of private property in naval warfare, we heard Germany, and with her Portugal, excuse themselves from expressing an opinion, stating that it was impossible for them to do so until the question of contraband should be settled.

Now, the German attitude is not to be passed over lightly in this matter. The same might be said as regards any other international problem, but in the question now under consideration the acquiescence of the Government of Berlin is especially indispensable, in view of the size of its navy and of its maritime trade. It seems to me, therefore, that we cannot turn a deaf ear to this declaration and pass over its consequences in silence, the more so since we cannot say that it is unfounded.

In this matter indeed, the principal proposal, that which was the pivotal point of the debate and which will probably be the principal question on which the vote will be taken, is the American proposal, which declares exempt from capture private property at sea, "with the exception of contraband of war." Contraband of war is therefore the exception which limits and defines the extent of the rule. Consequently the elaboration of the latter presupposes a knowledge of the former. If the rule is formulated before the exception is defined, we [806] cannot know what the scope of the rule is. It is therefore a veritable

inversion of logic to study the extent of the right of capture when we have not yet determined the content of contraband of war. And if we consider that by insisting on going backwards we shall perhaps deprive ourselves, when a vote is taken, of the cooperation that is essential to the success of our efforts, I consider that there is every reason for us to abandon this unfortunate transposition and to return to the natural order.

It is indeed too bad that it was not adopted when our program was being drawn up. It may be that it is now too late to undo the evil already done, because as a matter of fact everyone has taken his position and it is not easy to change. But at least it would save time and would introduce into this debate a spirit of order, sequence, and of light.

I ask, therefore, Mr. President, whether the vote on the question of capture should not be postponed until the question of contraband of war has been settled.

In reply to the suggestions of his Excellency Mr. RUY BARBOSA, the President remarks that the *questionnaire*, which was distributed to the members of the Commission at the first meeting was approved by them. No one made any objection to it or found any defects in the arrangement of the work. The Commission has already devoted three meetings to an examination of the proposal of the United States, and it would seem to be logically impossible to take up the discussion of contraband of war and of blockade until after the question of the inviolability of private property at sea has been settled. He therefore proposes that the discussion be continued in the order fixed by the *questionnaire*.

His Excellency Mr. Ruy Barbosa replies that it was not his intention to criticize the *questionnaire*, but that in the course of the discussions an obstacle may arise rendering desirable a change in the order of the questions. The discussions that have already taken place will not be wasted, and there would be no disadvantage in postponing the discussion of the inviolability of private property until after the discussion of contraband of war and blockade.

His Excellency Mr. Choate desires to know the text of the proposals to which his Excellency Mr. BEERNAERT alluded in his address, because he thinks that it is not impossible that they may be acceptable to his Government, and in any event it may serve as the basis of a compromise.

His Excellency Count Tornielli states that the Italian delegation adheres in principle to the ideas and conclusions set forth by his Excellency Mr. BEERNAERT in his remarkable address and feels that he is interpreting the general desire of the Commission in asking the first delegate of Belgium if he does not think the time has come to make known the proposals which he says he has prepared. This request seconds that made by his Excellency the first delegate of the United States.

His Excellency Mr. Choate having reiterated his request, his Excellency Mr. van den Heuvel reads the Belgian delegation's proposal and the statement of reasons therefor:

Between the two systems, that which is at present recognized and followed, which is based upon the legitimacy of the capture of enemy private property, and that which has been so frequently demanded, which is based upon absolute respect for belligerent private property, is there not room for an intermediate opinion and practice, which, thanks to mutual concessions, would reconcile the essential claims of the two systems?

In justification of the system of capture, its adherents say that a state of war

gives each of the belligerents the right to stop the commerce of his adversary for the purpose of weakening him and reducing him more promptly to terms.

[807] In demanding the system of the inviolability of enemy private property, its supporters point out the propriety of harmonizing, as far as possible, the rules of war at sea with those of war on land, and they lay stress upon the justice of provisions which result in reducing to what is strictly necessary the injuries caused directly to individuals and in making the consequences fall upon nations as a whole.

The Belgian delegation, setting aside its personal preferences, believes that it would be carrying out an idea which is in the minds of other delegations if it should endeavor to formulate a plan which would take into account the various objects sought and open the way for a compromise.

On the one hand, each of the belligerents would have the right to seize and utilize for military purposes enemy ships and cargoes. On the other hand, at the end of hostilities individuals would receive back the goods that had been preserved, or would receive either from the captor State or, if so stipulated in the treaties of peace, from their own State the value of the goods used or destroyed.

Special provisions would be formulated sanctioning with respect to belligerents the prohibitions affecting transportation of articles of contraband and violations of blockade.

The belligerents would take enemy prizes to the same ports where they now take neutral prizes.

Such a system might, in our opinion, be looked upon with favor by all—by those who desire first of all to preserve the right of intercepting the trade of the enemy and by those whose chief wish is to safeguard the rights of individuals in the enemy State to the greatest possible extent. It would not hinder the operations of naval warfare; it would not interfere with their essential results, but it would suppress useless severities and injuries. It would introduce more justice into hostilities.

This would be a step forward toward the divine ideal of social justice and humanity, which we are striving for.

The following is the proposal which we have the honor to present.¹

PROPOSAL RELATIVE TO THE RIGHTS OF BELLIGERENTS WITH RESPECT TO ENEMY PRIVATE PROPERTY IN NAVAL WARFARE

ARTICLE 1

Enemy merchant ships, as well as enemy goods under the enemy flag, may not be seized and detained by a belligerent except on condition that they be returned at the end of the war.

ARTICLE 2

The following vessels may not be seized or detained:

1. Barks that are engaged exclusively in coastal fishing as well as their gear and their catch of fish.
2. Vessels used exclusively for scientific purposes or subject, by reason of their character as hospital ships, to the provisions of the Hague Convention of July 29, 1899.

¹ Annex 14.

ARTICLE 3

A *procès-verbal*, stating the seizure, as well as an inventory of the ship's papers, are drawn up by the commanding officer of the capturing vessel.

Copies of these documents are given to the captain of the seized vessel or to his representative.

[808]

ARTICLE 4

The captain and the members of the crew of seized enemy ships are landed as soon as circumstances permit.

They are set free upon their promise not to serve against the capturing belligerent as long as hostilities last.

The Government of which they are citizens or subjects must not require or accept from them any service that is contrary to their pledged word.

ARTICLE 5

The capturing belligerent takes charge of the enemy vessels and goods which he has seized.

But he is permitted to destroy the seized vessel if circumstances do not admit of its being convoyed to a place of detention, or if the approach of an enemy force makes recapture seem imminent.

ARTICLE 6

Vessels that are in such bad condition that they cannot be preserved, or whose real value is out of proportion to the cost of repairs and of their up-keep, as well as perishable goods, may be sold.

ARTICLE 7

The capturing belligerent has the right to use and convert such seized vessels as he can make use of in war operations.

He has likewise the right to use the seized goods for military purposes.

ARTICLE 8

Ransoming of enemy ships is prohibited.

ARTICLE 9

Upon the termination of hostilities, the capturing State must return to their owner the vessels and cargoes which it has detained.

It may effect this restitution at the place where the ships and their cargoes happen to be.

It is not obliged to pay any indemnity for the deprivation resulting from the seizures nor for the deterioration which may have occurred while in custody, unless caused by gross carelessness on its part.

ARTICLE 10

The capturing State must reimburse the owner for the value of such vessels or cargoes as cannot, through its own act, or through the act of its agent, be returned, as well as the amounts realized from the sale of vessels and of goods which it was impossible to preserve.

ARTICLE 11

The execution of the obligations provided by the foregoing article may be entrusted by the belligerent and by virtue of the treaty of peace, to the State to which the seized vessels and cargoes belong.

[809]

ARTICLE 12

The foregoing provisions do not modify in any respect the rights which may belong to belligerents by virtue of the rules concerning blockade or contraband of war.

They shall not be applicable to enemy ships that form a part of auxiliary fleets or to those that have taken part in the hostilities.

His Excellency Mr. **Léon Bourgeois** remarks that the trend of the debate seems to have changed and that he personally congratulates himself, since he was one of those who asked that the discussion be continued. While the Commission had before it in the beginning two absolutely irreconcilable systems, we have to-day intermediate, compromise, and conciliatory proposals. The delegates have come to the Conference, not to be counted, but to unite, and whenever they find that they are not unanimous upon a question of an absolute character, they must try to discover a basis of agreement. It is in this spirit that his Excellency Mr. **BEERNAERT** spoke and that the proposal which his Excellency Mr. **VAN DEN HEUVEL** has just read is offered. His Excellency Mr. **J. CHOATE** has stated that this proposal is of interest to him and this would seem to indicate a willingness on his part to come to an agreement. His Excellency Mr. **LÉON BOURGEOIS** then asks permission to submit to the Commission, in the name of the French delegation, a very brief proposal, which likewise is of a compromise nature. As Mr. **LOUIS RENAULT** remarked at the last meeting, the aim of the French delegation is to make the capture of enemy vessels more conformable to principles; it desires to humanize and to moralize the system. The following proposal,¹ which his Excellency Mr. **LÉON BOURGEOIS** reads, is inspired by the idea that war should be waged between States and should not be a source of personal profit:

Considering that, although positive international law still admits the legality of the right of capture as applied to enemy private property at sea, it is eminently desirable that the exercise of this right be conditioned on certain formalities, until an understanding may be reached between the States with respect to its abolition:

Considering that it is of the utmost importance that, in conformity with the modern conception of war, which must be waged against States and not against individuals, the right of capture appears to be solely a means of coercion practised by one State against another State:

That, in this connection, all individual profit to the agents of the State, who exercise the right of capture, should be excluded, and that the losses suffered by individuals from captures should ultimately be borne by the State to which they belong:

The French delegation has the honor to propose to the Fourth Commission that the *vau* be expressed that such States as shall exercise the right of capture abolish the right of the crew of the capturing ships to share in the prizes and take such measures as are necessary to prevent the losses caused

¹ Annex 16.

by the exercise of the right of capture from falling entirely on the individuals whose goods shall have been seized.

His Excellency Baron **Marschall von Bieberstein** asks permission to make a comment upon his Excellency Mr. **BEERNAERT**'s address. The first delegate of Belgium said that the delegation of Germany had declared itself as opposed to the abolition of the right of capture of merchant ships sailing under a neutral flag. His Excellency Baron **MARSCHALL VON BIEBERSTEIN** remarks that this is an error. He recalls that in his speech he declared himself in favor of such [810] abolition, with the reservation that the delegation of Germany could not assume a final position until certain questions had been settled which are connected with that of private property at sea.

His Excellency Mr. **A. Beernaert** replies that he will confine himself to stating that despite the reservations he had made, his Excellency **BARON MARSCHALL VON BIEBERSTEIN** had expressed himself in favor of the abolition of the right of capture, and that this fact increases his own confidence in the future.

His Excellency Mr. **BEERNAERT** is happy to learn that his colleague from Germany goes further than he had understood.

His Excellency Mr. **Carlos Rodriguez Larreta** takes the floor and speaks as follows:

The Argentine delegation, in spite of the remarkable addresses of their Excellencies Messrs. **CHOATE** and **RUY BARBOSA**, declared itself in favor of the right of capture and confiscation of merchant ships under an enemy flag.

We believe that the present system helps to avert war and shortens its duration when it breaks out.

It has not yet been disputed that merchant ships become primary or secondary factors in war. No one will deny either that the immediate and at times exclusive object of naval warfare has been to ruin the commerce of the enemy—the only method of finding a substitute on the sea, where possession and sovereignty are impossible, for the occupation of territory in land warfare. The latter helps, as much as the right of capture and confiscation of merchant ships, to bring about the desideratum of war: to compel the enemy to sue for peace.

Besides, the wish to render war less frequent and the wish to avoid the material losses which it entails—we do not say the cruelties—seem to be contradictory sentiments.

The Argentine delegation has declared itself categorically in favor of the right of capture and confiscation, because it does not find any intermediate proposal acceptable.

The delegation of Brazil desires that requisitioned merchant ships be paid for at the end of the war. The only probable result of this principle would be the introduction into future treaties of peace of a clause prohibiting any claim of this kind against the conqueror by the vanquished.

This proposal of the Netherlands¹ would perhaps be more effective, but patriotism being a desperate sentiment in misfortune, we do not deem it prudent to put this restraint upon its freedom of action.

Both these proposals, and probably all those that can be formulated, would, in our opinion, be inconsistent with the primary object of naval warfare.

His Excellency Vice Admiral **Jonkheer Röell** then reads the following declaration:

¹ Annex 12.

In its declaration, the Italian delegation expresses the desire that intermediate proposals be presented and discussed before closing the discussion on No. III of the *questionnaire*.

It is for the purpose of meeting this desire that the delegation of the Netherlands has endeavored to submit to the kind attention of the Commission a proposal¹ having for its object the maintenance of the inviolability of private property at sea, without prejudicing so-called purely military interests.

[811] Indeed, objection might be made to the principle of the inviolability of private property at sea on the ground that when merchant ships may be converted into war-ships or used as such (for example, as auxiliary vessels for military transportation) the belligerent should at least receive the guarantee that the enemy merchant ships which he releases after seizure will not be reconverted thereafter or used as war-ships. We have here a certain analogy to war on land, in which non-belligerent inhabitants of the theater of war are protected and respected by the belligerent, but have not the right of becoming belligerents after having taken advantage of the protection of the invader. A merchant ship, which desires to take advantage of its non-belligerent character, must once for all abstain during the entire war from any warlike acts whatever.

The proposal of the Netherlands appears to us to harmonize the interests of the belligerents and those of individuals.

The belligerent State itself decides what merchant ships it desires to use as war-ships. It will keep these at its disposal; but it will furnish the merchant ships which it desires to take advantage of the immunity of private property at sea with a passport, in which the competent authority shall formally declare that the vessel holding the passport will not be used for war purposes.

This is an intermediate proposal, for, on the one hand, the inviolability of private property at sea will be safeguarded so far as possible, but, on the other hand—and in the opinion of the Netherlands delegation this is quite logical—the State must abstain absolutely from using for any war purpose whatever merchant ships which take advantage of this inviolability. For such inviolability cannot be granted to vessels which the belligerent State has not once for all declared that it will not make use of in the war.

His Excellency Mr. Choate considers that the Commission has devoted enough time to the examination of the question of the inviolability of private property, and he thinks that it would be difficult to take up the Belgian,² the French³ and the Netherlands¹ proposals without a careful examination of them. He proposes that the discussion be declared closed and that the vote which he will ask the Commission to take on this question, without continuing the discussion, be postponed to the next meeting.

The President supports this suggestion. The proposals which have been read to the Commission to-day will be printed and distributed, so that they may be voted upon at the next meeting.

His Excellency Mr. Beernaert states that he reserves the right to defend the Belgian proposal, if it is made the subject of criticism.

His Excellency Sir Ernest Satow likewise reserves the right to discuss the proposals read at the meeting.

¹ Annex 12.

² Annex 14.

³ Annex 16.

His Excellency Count **Tornielli**, in supporting the proposals of the first delegates of Germany and of Brazil, asks that, while considering the general discussion as closed, the Commission postpone the vote until there have been debates on the intermediate proposals and the questions relating to blockade and contraband of war.

Mr. **Louis Renault** remarks that it will be difficult to take up at the next meeting—that is to say, the day after to-morrow—the Belgian and the Netherland proposals, which require careful examination. Consequently he proposes that the discussion of them be postponed for a week and that on Friday next the examination of the *questionnaire* be continued.

[812] After an exchange of views, in the course of which the **President** states that he reserves to the Commission the right to determine the order in which the votes shall be taken, if it seems to it that there has been sufficient discussion, his Excellency Mr. **Nelidow** calls the Commission's attention to the disadvantage of an indefinite postponement of the votes.

His Excellency Mr. **Beldiman** thinks that the Commission might begin next Friday the discussion of contraband of war and blockade. The Commission decides on motion of the **President** to postpone for a week the discussion of the Belgian, French, and Netherland proposals, and to begin on Friday, July 12, the question of the conversion of merchant ships into war-ships.

The meeting adjourns at 12:15 o'clock.

[813]

FIFTH MEETING

JULY 12, 1907

His Excellency Mr. **Martens** presiding.

The meeting opens at 3:30 o'clock.

The minutes of the fourth meeting were adopted.

The **President** recalls that the Commission decided at its last meeting to take up the question of the conversion of merchant ships into war-ships.

After reading question I of the *questionnaire*:¹

Is it recognized in practice and in law that belligerent States may convert merchant ships into war-ships?

the **PRESIDENT** observes that the Commission has answered this question in the affirmative. The right to effect such conversion is a natural right; it is the right which every State possesses to defend itself and its independence by every means at its disposal.

The **PRESIDENT** reads question II of the *questionnaire*: When merchant ships are converted into war-ships, what legal conditions should the belligerent States observe?

This question expresses the idea that law and humanity impose certain conditions on the State that intends to take advantage of this right. On this subject the Commission has received proposals from Austria-Hungary,² from Italy,³ from Japan,⁴ and from Russia.⁵

The **PRESIDENT** proposes to the Commission the appointment of a committee of examination to study a project in which all the proposals that may be presented shall be taken into account. The Commission will discuss the main points and will leave it to the committee to work out the details.

The **PRESIDENT** states that the Commission is agreed upon the first two points of the synoptic table.⁶

[814] States must include in their navies merchant ships which have been converted. The conditions to be observed are not within the jurisdiction of the Commission, but of the domestic legislation of each State.

The **PRESIDENT** invites the Commission to take up the discussion of the question of how long the conversion is to be effective. He recalls that according to the Austro-Hungarian proposal this conversion must be permanent and that reconversion is prohibited.

Rear Admiral **Sperry** reads the following proposal: ⁷

¹ Annex 1.

² See declaration of Mr. **HEINRICH LAMMASCH** at the second meeting, *ante*, p. 747 [745].

³ Annex 4.

⁴ Annex 6.

⁵ Annex 3.

⁶ Annex 8.

⁷ Annex 7.

A war-ship must be commanded by a regularly commissioned officer, and must have a crew under military law and discipline.

In time of war no merchant ship shall be converted into a war-ship unless it is commanded by a regularly commissioned officer and has a crew under military law and discipline, and no conversion of this kind may be effected except in the territorial waters of the State owning the vessel or in the territorial waters over which it has effective control through its military forces.

On the motion of the **President**, the proposal is referred to the committee of examination.

Rear Admiral **Sperry** makes known the views of the American delegation¹ with regard to contraband of war:

1. Absolute contraband shall include arms, munitions of war, provisions, and articles which are employed solely for military purposes or for military establishments.

2. Conditional contraband shall include provisions, materials, and articles which are employed both in peace and in war, but which by reason of their character or special qualities, or their quantity, or by their character, quality, and quantity, are suitable and necessary for military purposes, and which are destined for the use of the armed forces or for the military establishments of the enemy.

3. The list of the articles and provisions which are to be included in each of the above-mentioned classes must be duly published and notified to neutral Governments, or their diplomatic agents, by the belligerents, and no article shall be seized or confiscated as conditional contraband until this notice has been given.²

On the motion of the **President**, the Commission defers the discussion of these articles until the question of contraband of war is under consideration.

Rear Admiral **Siegel** states that, so far as the duration of the conversion of these vessels is concerned, the German delegation accepts in its entirety and supports the proposal of the delegation of Austria-Hungary,³ which states that the conversion must be permanent as long as hostilities last and that reconversion must be prohibited.

His Excellency Mr. **Gonzalo A. Esteva** makes the following declaration of adhesion to the Italian delegation's proposal:⁴

The delegation of Mexico has the honor to inform the Commission that, in compliance with the instructions of its Government, it adheres to the [815] proposal presented by the Italian delegation concerning the conversion of merchant ships into war-ships. This proposal harmonizes the possible necessities of national defense and the present tendencies of maritime law.

His Excellency Mr. **Ruy Barbosa** delivers the following address:

MR. PRESIDENT: The nations that signed the Declaration of Paris, as did Brazil, cannot fail to follow with special interest the debate to-day on the conversion of merchant ships into war-ships. It is not a simple matter of detail, as might be supposed at first sight, in considering the subject superficially. According as you facilitate the conversion in question or as you subject it to strict conditions, you will have abandoned the principle of 1856 to the opposite reaction or you will have preserved it from the risk of serious attack later on.

Permit me, therefore, gentlemen, to lift the question a little higher than these

¹ Annex 31.

² Annex 30.

³ See Mr. HEINRICH LAMMASCH's declaration at the second meeting, *ante*, p. 747 [745].

⁴ Annex 4.

details, so that I may speak in the fullness of knowledge with regard to their importance. In doing so, I do not hesitate to lay myself open to the accusation of being academic, which term has been used without any grounds, in my opinion, both on the outside and in our midst, in referring to our debates.

Have our debates really deserved in any way whatsoever the reproach of being called academic? In the first place, it would be vain to try to discover how to avoid academic methods, when politics are forbidden us and our Conference is reduced to a purely legal rôle. Academies and courts are the only means of settling collectively disputed points of law, without any regard to politics. But our speeches have risen above our observation and our practice; that is to say, above facts, the results of political experience, the acts of Governments, the opinions of statesmen. Are we perchance academic in building our conclusions on such foundations? Or is this censure aimed at the lack of results to which it is believed the greater part of our efforts will lead? In that case, with so many obstacles rising up almost at our every step, is there in our program a single real solution which is not open to the same reproach; that is to say, which does not run the risk of encountering insuperable difficulties either here or on the outside?

This Conference has been called the parliament of nations. Now it is of the very essence of parliaments to talk; that is to say, not to confine themselves to voting, but to discuss questions with the greatest freedom of speech. Speech is not harmful, even when it overflows. And in this connection, may I be permitted to say that I do not concur in the witty remark of an illustrious member of this assembly to the effect that the more we discuss, the more we disagree. The evidence of the facts is, in my opinion, exactly the opposite. If certain points had not been discussed with a certain breadth of view in our plenary Commissions, we could not have reached the point of forming commissions of examination. It is in countries where free speech is distrusted, where it is prohibited, that agreement is never reached and that antagonisms are irreducible. In countries where there is no end of discussion, as in England and the United States, agreement is always reached, and there are no insolvable problems.

Do not, therefore, take it in bad part if I conform my conduct to what I conceive this representative body of the civilized world to be, when I regard it, in view of the designation adopted, as the parliament of peoples, and broaden somewhat the scope of the examination of this matter, which is apparently so limited.

[816] Whatever may be our attachment to the principle established in 1856 of the abolition of privateering, we cannot be mistaken about the interested motives which resulted in this measure of civilization.

It is always the coincidence of interest and justice that assures the victory of the cause of humanity. BLUNTSCHLI merely stated a most obvious fact when he wrote, "The great maritime Powers, having at their disposal a strong navy, do not need privateers. Their superiority over States having a numerous merchant marine but few war-ships is increased by the abolition of privateering, since *merchant ships may no longer be converted into war-ships.*"

From these words subscribed to by the authority of an oracle in questions involving the law of nations we may infer the dangers of possible conflict between the observance of the principle of Article 1 of the Declaration of Paris and the conversion of merchant ships into war-ships. This is so true that another authority of no less weight—I refer to PHILLIMORE—speaks synonymously of "mari-

time volunteers or privateers ”¹; so true that the most modern writers, like Mr. SMITH and Mr. SIBLEY in their recent work on the Russo-Japanese War, see “a certain difficulty” to be overcome, “whether or not a Russian volunteer cruiser is a privateer”; so true that, with regard to the war apprehended in 1877 between the elephant and the whale, to use BISMARCK’S expression, a master like FUNCK-BRENTANO did not hesitate to say:

Since then all the other maritime States have encouraged their great navigation companies to construct steamers capable of being converted into cruisers in time of war. This, he adds, is in effect the abolition of Article 1 of the Declaration of Paris which abolishes privateering. Only the names are changed; private naval warfare will be called public naval warfare; privateers will be called cruisers, letters of marque will be replaced by commissions, and privateer captains will become commissioned captains.²

We see that beneath the apparently technical matter, which is the subject of our debate to-day, it is possible that the external features of language may hide from view a change in the principles of international law, which we have become accustomed to considering as definitely established.

Again, look at what took place in 1870. In the month of August of that year a decree of the Government of Germany ordered the creation of a volunteer fleet. The owners of vessels were requested to put them in shape to attack French war-ships. The crews of this fleet, furnished by the ship-owners, would be subject to military discipline. The officers, although merchant marine officers, would wear the uniform of naval officers, would receive temporary commissions and might obtain permanent commissions in case of exceptional service. Finally, these vessels would fly the naval flag. The Government of Paris protested against these acts to the British Government, which found no objection to the conduct of the Government of Berlin. However, Mr. EDWARD HALL, one of the most eminent British authorities on international law, after a very careful examination of the question, having discussed one by one the alleged differences between the legal aspect of privateering and that of volunteer fleets constituted on this model, concluded as follows: “The sole real difference between privateers and a volunteer navy is then that the latter is under naval discipline, and it is not evident why privateers should not also be subjected to it.”³

[817] BLUNTCHLI does not appear to be of the same opinion, basing his views on this obedience to military discipline and command.⁴ But he himself tells us that the privateer also “recognizes the authority of the commanding officer of the fleet.”⁵ And therefore Mr. EDWARD HALL asks whether the dependence in this case would be less than in the other.

It is indeed certain that this system of improvising volunteer war fleets is not confused with that of incorporating part of the merchant marine of a nation in the regular navy. But none of the proposals to be examined to-day by this assembly makes any mention, so far as I can see, of the duration of the conversion which it is proposed that we regulate. It may therefore be temporary and end with the war.

Now, gentlemen, if we must not forget the cause of peace entrusted to our

¹ Phillimore, vol. 3, sec. 92, pp. 150-151.

² *Revue générale de droit international Public*, vol. 1, 1894, p. 328.

³ *A Treatise on International Law*, 5th ed., 1904, pp. 527-528.

⁴ Bluntschli, *Le droit international codifié*, par. 670.

⁵ *Ibid.*

zeal, and if in the accomplishment of our task our first duty is not to subscribe to any innovation that is capable of jeopardizing the results reached in favor of the amelioration of war, of its subjection so far as possible to the rules of law, it seems to me that the question now under discussion will extend far beyond its technical and present horizon.

In all the countries which have signed or adopted the Declaration of 1856 there has been an opposite current of opinion, which has never admitted it as an accomplished fact. This current has increased in a threatening manner. It always increases. People do not confine themselves to upholding the right of capture. They demand the re-establishment of the right of privateering. The two tendencies support each other, the more so of course since the revival of privateering is pleaded for with the same arguments as are used against the abolition of the right of capture: the efficacy and humanity of the destruction of enemy maritime commerce used as a supreme weapon in naval warfare.

The entire technical literature of France, from the celebrated writings of Admiral AUBE, is full of this enthusiastic confidence in the formal or practical, declared or actual revocation of the Act of 1856, which liberal-minded men have considered "the greatest event of the nineteenth century from the standpoint of international law." In erudite and select books, which found a school and whose editions have been exhausted, conclusions like the following are reached: "In the name of principles and facts, we venture to assert that at the present time privateering war or industrial war, which attack the material resources of the enemy by snatching from him what are the sinews of war, whether on land or sea, is on the whole the most natural. . . . Consequently such will be the warfare of the future. . . . We must therefore prepare for it in full confidence."¹

This is not yet the attitude or the language of the Powers. But some of those persons who follow their policies in matters of naval warfare believe themselves warranted in giving expression thereto, like the author whom I have just quoted: "Privateering, for which all the Powers are openly making preparations, privateering, the natural weapon of nation against nation, privateering, whose very first blow seriously injures the enemy, such in our opinion will be the war of to-morrow."²

I am by no means a pessimist. On the contrary, I believe that we are destined to progress. Yesterday I joined in the hopes of those who appealed to the future in this question of the immunity of maritime property. But in order that these hopes may not be disappointed and that we may not meet with retrogression instead of progress, let us not forget in examining this subject that only a step is necessary, and this sanction given to the right to convert temporarily [818] merchant ships into war-ships will conceal under its phraseology and its technical apparel actual re-establishment of privateering. In this connection, having no means of opposing the legal sanction of this dangerous instrument of war, my wishes are that the strictest guarantees be employed against the degeneration of which it is capable.

To this end I shall propose that the measures indicated in the proposal of the Netherlands³ be added to those contained in the proposal of Italy,⁴ and

¹ Captain Z. and H. MONTÉCHANT, *Réformes navales*, Paris, 1899, pp. 21 et seq.; LA MACHE, *La guerre de course*, Paris, 1891, p. 158.

² LA MACHE, *ibid.*, pp. 176-177.

³ Annex 5.

⁴ Annex 4.

likewise the registration of the vessels on the naval list of the country authorizing the conversion, in accordance with the Russian proposal.¹

The President states that this address will be printed and inserted in the minutes. In this connection, he recalls that politics must be excluded from the deliberations of the Commission. They are not included in the Russian program, which was approved by the Powers, and the Russian Government's circular formally states that politics are not within the scope of the Conference. (*Applause.*)

His Excellency Mr. Ruy Barbosa replies as follows:

MR. PRESIDENT: The words with which you have received my address seem to imply a reproach, which I cannot, which I must not leave without an immediate answer, because this kind of censure, if such it be, I have not deserved. I have grown old in parliamentary life, in which I have spent no less than twenty-five years. I have the honor to preside over the Senate of my country, where parliamentary institutions have been in existence more than sixty years. I therefore ought to have some knowledge of the duties of the tribune in deliberative assemblies and I should be incapable of abusing its privileges.

What have I really done? I wanted to lift the subject under discussion a little higher than these details by surveying its general aspect; that is to say, its relation to the spirit of pacification and civilization of war, which should inspire and guide our labors. Then I appealed to the opinion, according to which the employment of merchant ships as war-ships, whether they be operated after conversion or be utilized by the creation of volunteer fleets—the employment which we are endeavoring to regulate—is identical with, or very similar to, privateering, long since abolished. To establish my point, I appealed to unexceptionable names, like PHILLIMORE, BLUNTSCHLI, HALL, FUNCK-BRENTANO, and I mentioned historical events discussed in works on international law, such as the action of the Government of Berlin during the Franco-Prussian war, calling your attention to the opinion of these authors on this subject. My object in all this—and I myself told you so—was to awaken in you a vivid realization of the delicacy of the question and to warn you of its dangers, unless every precaution were taken to prevent the re-establishment of privateering under some other name. Did I perchance, in laying before you these considerations, tread upon forbidden ground? Evidently not. On the contrary, these considerations must necessarily be the initial phase of this debate, since, in order to know upon what to base the details, it was necessary first to discover the nature, the tendency, and the results of the institution which we are thinking of sanctioning.

It is true that I alluded to politics, but I did so incidentally, very incidentally, and merely for the purpose of pointing out that politics were forbidden us. You will see from the most absolute authority, from the text itself of my address, which will be published by the secretaries without my correcting it, that this is so.

Was it right, therefore, to receive my speech, as has been done, with the [819] solemn warning that politics are forbidden us, leading people to suppose that I had broken this rule?

But since you formulate this rule in the absolute terms which we have just heard, I must examine it. Is it true? Is it really the rule to the extent that has been stated? No, Mr. President. Certainly, politics are not within our scope. We cannot play politics. Politics are not the subject of our program. But can

¹ Annex 3.

we accomplish our object if we believe ourselves compelled to erect a wall between us and politics, using this term, as it should be understood, in its general acceptance, in its higher meaning, in its neutral meaning? No, gentlemen.

We have not forgotten that His Majesty the Emperor of Russia, in his note calling the Peace Conference, expressly excluded from our program political questions. But this prohibition evidently contemplated only militant politics, active and aggressive politics, politics which disturb, which excite, which separate peoples in their internal and international relations; but not politics considered as a science, politics studied as history, politics investigated as a moral rule. For the moment it is a question of making laws, either domestic or international, for nations, we must at the very outset examine in each instance the possibility, the necessity, the utility of the measure, in the light of tradition, of the present state of the sentiments, the ideas, and the interests which animate peoples and control governments. Well, is not all that politics?

Politics, in the popular meaning of the word, no one will dispute the fact that such politics are forbidden us. We have nothing to do with the internal affairs of States, or in international affairs with the quarrels between nations, disputes involving *amour-propre*, ambition or honor, questions of influence, of equilibrium or of predominance, questions which lead to strife and war. That is the kind of politics which is forbidden.

But, in the other, in the broader acceptance of the term, the highest and not the least practical, the supreme interests of nations in their mutual intercourse, can it be that such politics are forbidden us? No, gentlemen. Do you wish me to prove it?

When Russia put the reduction of armaments on the program of the First Conference, when the Czar's Government made this idea the sole subject of the original program of the Conference of 1899, when other Powers proposed that it be included in the program of the present Conference, were we not being invited to plunge into politics?

There is nothing under heaven more eminently political than sovereignty. There is nothing more boldly political, gentlemen, than the attempt to limit it. Are you not engaged in the most out-and-out politics when you set up in obligatory arbitration a barrier to the free will of sovereign Powers? These absolutely political entities, these sovereignties of which you are the representatives in this Conference would abdicate part of their natural independence to a tribunal by agreeing to submit to it certain disputes between sovereign States. Could there be anything more characteristically political, gentlemen?

Look at the other subjects to be examined by this Commission. When we consider the abolition or the continuance of privateering, the preservation or extinction of the right of capture, in order to decide between them when we set the claims of belligerents against those of neutrals, in order to harmonize them or to reject them when we decide, as we shall have to do in certain cases, [820] between intervention and non-intervention, between the right to resort to war and the duty to avoid it, are these points of law that we are unraveling? Are they not, on the contrary, international politics?

And in all our deliberations here, gentlemen, in what we yield, in what we refuse, in what we compromise, is it not the policy of our country that is always behind us as the cause, the inspiration, the incentive of our acts?

Is it the wish that we avoid politics here? That is merely playing with

words and closing our eyes to reality. Politics are the atmosphere of States, politics are the domain of international law. Whence does international law proceed if not from politics? It is revolutions, wars, treaties of peace which slowly elaborate this great body of the law of nations. Whence comes modern international law? In the first place, from the American Revolution, which preceded the French Revolution and from which we have seen spring up, after the United States, all America freed from its colonial bonds. In the next place from the French Revolution, which poured the whole contemporary world into new molds; then from that liberal creative Power, Great Britain, with its influence over the seas, over the action of Congresses and the development of distant colonization; and, finally, the democratic, revolutionary, social, and military movements of the nineteenth century, the wars of the Empire, the unification of great nationalities, the colonial campaigns, the entrance on the scene of the extreme Orient. Well, here we have politics, here we have international law. How can we keep them separate?

Politics have transformed private law, they have revolutionized penal law, they have made constitutional law, they have created international law. Politics are the very life of peoples, they are force or law, civilization or barbarism. How can they be barred from an assembly of free men gathered together at the beginning of the twentieth century to give the law of nations conventional form? How, if this law is indeed their politics? Merely because we are a diplomatic assembly? But diplomacy is nothing else than politics in their most delicate, refined, and elegant form.

That is why I am forced to the conclusion that, if we were strictly forbidden contact with politics, it would be an impossible task that has been imposed upon us, and we would be forbidden the use of speech itself. Let us not be frightened by words; let us interpret them by facts and acknowledge the plain truth which forces itself upon us with its irresistible evidence.

After stating that the Commission takes official note of these observations of his Excellency the first delegate of Brazil, the **President** requests the Commission to return to the discussion of the Austro-Hungarian proposal, which is supported by the German delegation.

Mr. Heinrich Lammasch speaks as follows:

The proposal which I had the honor to submit to the deliberations of this Commission in the name of the Austro-Hungarian delegation¹ appears to me so simple as not to require a detailed explanatory statement in a plenary meeting of the Commission.

The proposal is this: it shall not be permitted to reconvert a merchant ship which has been converted into a war-ship into a merchant ship as long as the war lasts. For such a reconversion, if permitted, might give rise to many abuses. To prevent such abuses, we deem it necessary that the character of vessels be made as stable and permanent as possible, and that we do not create a sort of naval hermaphrodite, that is to say, a vessel which may, according to circumstances, assume at a given moment the male sex by participating directly or indirectly in battle, and at another moment the female sex by contenting itself with carrying provisions to its people.*

The proposal that we have had the honor of presenting is in a way cognate with the one which was submitted at the last meeting by the delegate of the

¹ See declaration of Mr. HEINRICH LAMMASCH at the second meeting, *ante*, p. 747 [745].

Netherlands, Admiral RÖELL,¹ and which contemplates that States shall decide at the beginning of a war what merchant ships they intend to use as war-ships, barring other merchant ships, with regard to which such a declaration is not made, from such use for military purposes.

The practical scope of our proposal will also greatly depend upon the action taken on the preliminary question, namely, whether conversion, and consequently reconversion, if permitted, may be effected only in national ports, or in neutral ports as well.

In view of the connection between these two questions, perhaps the most fitting *modus procedendi* and the one that would spare us useless repetitions would be to defer the examination of this question until the question regarding the place of conversion is decided.

The President asks whether the Commission has any objections to make to the Austro-Hungarian proposal,² which seems to meet his views.

His Excellency Mr. Keiroku Tsudzuki asks that greater facilities be given for the reconversion of war-ships into merchant ships. On this point the Austro-Hungarian proposal² does not respond to the wishes of the Japanese delegation.

On the motion of the President, the question is referred to the committee of examination.

The Commission takes up the question of the place where conversion may be effected. The President recalls that there are three places where this may be carried out: (1) national ports—Japan³ adds thereto ports occupied by the enemy; (2) the open sea; (3) neutral ports.

Rear Admiral Siegel thus states the views of the German delegation:

Converted vessels may be compared to militia and corps of volunteers mentioned in Section 1, Chapter I, Article 1 of the Regulations of 1899.⁴

Just as these militia and corps of volunteers serve to complete the army on land, converted ships are destined to assist the navy.

The domestic legislation of a country and its administrative regulations alone shall determine the time and the place where such auxiliary corps are to be formed. International law does not contest the right of incorporating these corps, while hostilities last, wherever the regular army may happen to be.

What is the rule for auxiliary troops applies logically to converted ships, if they fulfill the conditions of Article 1 of the Regulations of 1899; that is to say, if these vessels are placed under the command of a naval officer or if they are incorporated in the navy.

But certain delegations propose that conversion be not permitted except in the territorial waters of the country. I do not believe that this restriction is justified from a legal or admissible from a military point of view.

Although vessels are, as a general rule, taken over by the navy, that is to say, converted into war-ships, at the beginning of the campaign and when [822] they are in a national port, it is by no means forbidden them to mobilize at any other suitable time, and no law, no international rule prohibits conversion outside of the territorial waters on the high seas.

¹ Annex 12.

² See Mr. HEINRICH LAMMASCH's declaration at the second meeting, *ante*, p. 747 [745].

³ Annex 6.

⁴ *Ante*, Second Commission, annex 1.

No one can dispute the fact that a State retains and preserves jurisdiction over vessels under its flag that are on the high seas.

If the laws of a State permit the property of its subjects to be used for war operations, the State may exercise this right, not only within the sphere of its territorial jurisdiction, but also on the open sea, which is subject to no single jurisdiction.

A merchant ship converted into a war-ship on the open sea becomes legally a war-ship, provided the legal requirements for such conversion are observed.

The Italian delegation's proposal¹ meets our point of view. It states that conversion may be permitted both on the open sea and in the territorial waters of another State, except as regards vessels which leave the territorial waters of their country after the outbreak of hostilities.

It seems to me that this last condition is too severe, and that it can be omitted.

Colonel **Ovtchinnikow** of the Admiralty asks permission to present certain explanations with regard to the Russian proposal² concerning question II of the *questionnaire*.³

In the Commission a number of drafts were presented setting forth the conditions that belligerent States should observe in converting merchant ships into war-ships. In three of these drafts it is not clearly stated that conversion may be effected only in territorial waters.

The Russian proposal provides for cases in which conversion may be effected on the open sea.

From a practical standpoint, such instances may occur almost any day during hostilities. For example:

A war-ship encounters a merchant ship of the enemy. According to existing custom, it captures it, places on board a crew of its sailors, puts the prize under the command of an officer and flies the naval flag.

I believe that conversion effected under these conditions should be considered entirely legal. Prizes, the moment they are captured, become ships of war. They cannot be treated as pirates. They have the right to defend themselves and to fight the enemy. But I must point out the fact that in this case the conversion of merchant ships, as prizes, into war-ships was effected on the open sea.

Again, let us consider another hypothesis. A fleet or ship of war of one of the belligerents encounters on the open sea a merchant ship of its own country. Why should not this fleet or ship of war, which has the right to treat prizes as war-ships, have the right to convert the vessel of its own country into a war-ship? I believe that conversions will ordinarily be effected in territorial waters, because such a conversion will always be much more substantial.

But cases occur where it would be impossible to deny the right of the belligerent to convert merchant ships into war-ships, even outside of his territorial waters.

His Excellency Lord **Reay** defines a fighting ship as follows:

In order that a war-ship may become a vessel in the service of the State, it must be provided with a commission, and there are many operations of [823] naval warfare that may not legally be undertaken except by a vessel belonging to the government of a recognized Power and possessing the required commission. A vessel which should enter a neutral port simply as a

¹ Annex 4.

² Annex 3.

³ Annex 1.

vessel belonging to the merchant marine and which should leave that port as a war-ship with the necessary commission would have undergone complete conversion in neutral waters and would have increased its value as a fighting unit. But a neutral may not, without violating the principles of neutrality, permit a belligerent to increase its value as a fighting vessel in neutral territorial waters. It follows, therefore, that a neutral State may not permit, under penalty of incurring the same reproach, a vessel which enters its territorial waters as a non-combatant to quit those waters as a war-ship duly authorized by a belligerent State and equipped to take part in hostilities.

But if the neutral is bound to see that its neutrality is respected in its territorial waters, the belligerent is likewise bound to abstain from violating that neutrality. It is therefore clear that, if the fact of a neutral State's permitting a belligerent vessel to be converted into a war-ship within its territorial waters constitutes a violation of neutrality, it is likewise the belligerent's duty not to commit an act of this kind in neutral territorial waters, and that any vessel which has thus been converted by disregarding the neutral's neutrality and the duties of a belligerent has not regularly acquired the character of a war-ship and its status as such must not be recognized.

The objection which we might make with regard to conversion on the high seas is entirely different. International law as it is understood at the present day permits a belligerent vessel regularly made a war-ship to exercise the rights of a belligerent, not only against the enemy, but also with respect to neutrals. Now, a neutral has a right to know up to a certain point what vessels may exercise these rights. If it were lawful for vessels which left their national ports as vessels of the merchant marine to be converted on the high seas and to become at one stroke war-ships, without its being possible for neutrals to have knowledge of these changes, it is certain that such a state of affairs would occasion regrettable incidents. Whenever a vessel was converted into a war-ship on the high seas or in neutral territorial waters, complications might follow which would lead to intolerable conditions. There is no way to obviate the contingencies which I have pointed out except by frankly recognizing that the act of converting a vessel into a war-ship is an "act of sovereignty" in the full meaning of the term, that such conversion consequently may not take place except within national jurisdiction, and that a war-ship will not be recognized as such unless this condition is complied with.

His Excellency Lieutenant General Jonkheer den Beer Poortugael declares that he supports the British proposal.¹ He believes that the Peace Conference is not the place to give wider range to war and to facilitate the means of converting merchant ships into war-ships. The comparison of a merchant ship converted into a war-ship with militia is not, in his opinion, an exact comparison. Militiamen are combatants like other combatants, while merchant ships converted into war-ships engage only in the pursuit of prizes and, so far as possible, avoid a fight, for which they are not adapted. Conversion on the high seas will give rise to many abuses. It will keep neutrals in a state of uncertainty, as they will not be sure of the nature of a vessel. Under these circumstances, the places where conversion may be effected should be limited to "national ports."

[824] Jonkheer van Karnebeek asks whether the Commission should not consider, in addition to the alternatives formulated by the President, the case

¹ Annex 2.

of conversion in allied ports or waters. One would be disposed to believe that there could be no question about the legitimacy of such a conversion, but according to some of the proposed provisions, for example that suggested by Italy,¹ it would appear to be barred.

It would seem therefore that this question should be considered and settled in one way or the other. Perhaps the committee of examination might take it up later on.

His Excellency Count **Tornielli** states that the time has come to explain the reasons for the Italian proposal.¹ Merchant ships which have left their territorial waters before the outbreak of hostilities should be permitted to effect conversion on the high seas or elsewhere which would enable them to resist capture. These reasons cannot be urged in favor of vessels which left their territorial waters after the outbreak of hostilities and which consequently could have taken the necessary measures in advance.

Mr. Louis Renault remarks that the question of the place where the conversion of a merchant ship into a war-ship may be effected admits of three solutions. According to one view conversion may be effected anywhere, even in a neutral port; no one seems to have taken this position in so many words. He shares the opinion of his Excellency Lord **REAY** on this point and believes that such a conversion would be contrary to neutrality. It would leave the way open to fraudulent practices, which it is easy to imagine. On the other hand, he does not see in what way the principles of international law could be urged against conversion on the high seas. According to Lord **REAY**, conversion is an act of sovereignty. **Mr. LOUIS RENAULT** does not dispute that fact, but the principle does not entail the consequence indicated. As a matter of fact why may not an act of sovereignty be accomplished on the high seas, where there is nothing to hinder the action of a State with regard to the vessels that fly its flag? That is precisely a decisive reason for permitting conversion to be effected on the high seas.

There is an important point to remember in Lord **REAY**'s statement, the matter of publicity. The conversion must in some way be brought to the knowledge of the public, in order that interested parties may know where they stand with respect to the vessels which they encounter. Perhaps the Drafting Committee or the committee of examination may consider the question along these lines.

His Excellency **Mr. Tcharykow** states that the Russian proposal² meets the views expressed by **Mr. RENAULT**. The registration of vessels which have been converted gives the publicity which was alluded to. Again, it would be advantageous to require, in addition to this official registration, notification of both belligerent States and neutral States.

Mr. Guido Fusinato states that there is a reason which no one has yet mentioned in favor of the Italian proposal.¹ It would be regrettable for a merchant ship leaving a neutral port where it has enjoyed the privileges of a merchant ship to be allowed to take advantage of these privileges to convert itself into a war-ship. That would seem to be an abuse of its privilege and consequently there would be difficulties in the way of permitting it to change its character on the high seas.

¹ Annex 4.

² Annex 3.

The President sums up the opinions that have been set forth. He shows that the British delegation's objections to conversion on the high seas dis-
[825] appear as a result of the publicity proposed to be given to this operation.

Again, the Commission appears to be unanimous in considering that conversion carried out in neutral ports or waters would be a violation of the rights and duties of neutrals. Under these circumstances the PRESIDENT proposes that the discussion be closed and that the various proposals be referred to the committee of examination.

His Excellency Count Tornielli remarks that the Commission has not yet discussed the British proposal with regard to the definition of the term war-ship.¹

The President thinks that this discussion should be taken up when contraband of war is under consideration.

His Excellency Mr. van den Heuvel is of the PRESIDENT'S opinion with regard to the discussion of the second part of the British proposal.

His Excellency Lord Reay emphasizes the advisability of a special discussion *ad hoc*, which he requests to have postponed until the next meeting.

His Excellency Count Tornielli shares this point of view.

The discussion of the proposal of Great Britain on the "definition of a war-ship"¹ is postponed to the next meeting.

The President reads question IV of the *questionnaire*.²

Is it good practice in war to seize and confiscate upon the outbreak of hostilities enemy merchant ships stationed in the ports of one of the belligerent States?

Colonel Ovtchinnikow of the Admiralty reads the proposal of the delegation of Russia concerning the question of days of grace.³ Its object is to ensure the observance of the customs that are very often followed by belligerents on the outbreak of war.

Practice and science have established the following procedure, which has been in use since the Crimean War. A sufficient number of days of grace must be given to merchant ships of belligerents which are in an enemy port at the time of a declaration of war. This period must be long enough to allow the vessel to complete the unloading or loading of goods not constituting contraband of war, to leave the port freely, and to reach with every guarantee of safety the nearest port of its country of origin or some neutral port.

Likewise merchant ships of the enemy nation, which left any port before the declaration of war and which are ignorant of the outbreak of hostilities, the latter having begun while they were on the high seas, may not be captured or confiscated as prizes.

I take the liberty of giving examples:

France and England followed this system at the time of the Crimean War. These Powers allowed Russian merchant ships which were at their mercy a period of six weeks, in order to give them an opportunity to save their vessels and their goods from the danger of capture.

[826] The belligerents observed this rule also during the Italian campaign of 1859 and the Austro-Prussian war of 1866. The Government of Prussia had announced in a circular dated June 21, 1866, that Austrian merchant ships

¹ Annex 2.

² Annex 1.

³ Annex 18.

which were in Prussian ports on the outbreak of the war and even those which came into those ports without knowledge of the commencement of hostilities would have the right to unload their goods and take on board a fresh cargo, with the exception of articles constituting contraband of war, allowing them six weeks in which to do so.

At the time of the war of 1870-1871 France and Prussia made similar declarations. The French instructions of July 25, 1870, allowed German merchant ships, which entered French ports unaware of the outbreak of hostilities, a period of thirty days to unload, with the right of receiving a pass at the end of this period permitting them to leave French waters in safety.

The German instructions of January 19, 1871, declared their ports open for the departure of French merchant ships until February 10, 1871.

At the beginning of the Russo-Turkish war of 1877-1878, which began on May 24, 1877, the general rule authorizing Ottoman merchant ships in Russian ports at the time of the declaration of war to put to sea within a period sufficient to complete their loading, unless this cargo included contraband of war. The Ottoman Government, in an irade dated May 13, allowed all Russian vessels a period of five days in which to leave Turkish ports.

The same rules were applied during the Spanish-American war, which began on April 21, 1898.

By a royal decree dated April 24, 1898, the Spanish Government allowed American merchant ships the right to leave Spanish ports within a period of five days. The proclamation of the President of the United States, dated April 26, allowed still greater privileges to Spanish ships, namely:

1. The right to leave American ports after loading and to return to Spanish ports, if they departed before May 21; and

2. The right to enter American ports, to unload their cargo; to take on a new cargo; and thereupon to sail without molestation to any port not blockaded, if their departure for the United States from a Spanish or neutral port had taken place previous to April 21.

Summing up all these facts we see that the Powers have in our day observed the principle of days of grace to be allowed private ship-owners of the enemy nation, in order to give them an opportunity to protect their legitimate interests.

But be that as it may, there is no certainty that this procedure will be uniformly followed in coming wars, unless there is an international agreement on the subject.

The existing system of capture and confiscation at sea, if rigorously applied, makes possible the contention that the belligerent *has the right* from the beginning of the war to capture and confiscate merchant ships of the enemy, together with enemy goods. In some cases this contention is perhaps inspired by more or less serious considerations.

Let us suppose, for example, that in a port of one of the belligerents there happens to be a merchant ship of the other, which is of such a character that it can easily be converted into a war-ship. To allow this vessel to depart [827] would be to betray the vital interests of the country.

Again, we can imagine the case of a merchant ship of one of the belligerents undergoing repairs or reconstruction, etc., in an enemy port, which cannot leave that port before the expiration of the days of grace.

I think that we should foresee such circumstances, which are beyond the

control of the merchant ship, and lay down an international rule for such a case, because otherwise it might be contended that the enemy ship is liable to confiscation.

In submitting to the consideration of the Commission the Russian proposal with regard to days of grace, I take the liberty of pointing out that our proposal furthermore satisfies other desires that have been expressed in the Fourth Commission.

In the preceding meeting an intermediate solution was sought for the question of private property at sea. Our proposal with regard to days of grace gives this problem a solution, I presume.

In conclusion, I must say that our proposal with regard to days of grace to be allowed enemy merchant ships was dictated by the desire to strengthen mutual confidence in international relations and, so far as possible, to place the interests of individuals on the sea under the protection of law, of peace, and of equity.

Captain Ottley reads a statement of the reasons for the attitude of Great Britain in the matter of days of grace:

The British Government is entirely in sympathy with the humanitarian sentiments which have inspired the Russian proposal.¹ But at the same time we believe it advisable to point out certain difficulties of a practical nature which will prevent the realization of this proposal concerning days of grace.

Happily at the present time it is customary to allow days of grace to merchant ships, but this practice has been in existence only a few years. There is, moreover, the incontestable fact that the length of this period granted to enemy and neutral vessels varies considerably according to circumstances.

For more than fifty years Great Britain, when she has been a belligerent, has always allowed days of grace to merchant ships. Furthermore she will always follow this plan, on condition nevertheless that her military operations be not seriously affected thereby.

It is evident, however, that this period is allowed as a *favor* and that it is not a right, and from our point of view it would never be possible to formulate an international law which would require a belligerent Power to allow days of grace on the outbreak of war *without any reservation*.

From what has been said by the honorable delegate who last spoke, it seems quite evident to us that it would be *impossible* to formulate an absolute rule which would satisfy *everybody* under all *circumstances*.

A period of such length as would satisfy the merchant marines of two neighboring Powers would be quite insufficient in cases where the belligerent Powers are in different hemispheres.

Again, we must consider the case of a Power that has colonies in distant seas. A period of a few days, which might suffice for merchant ships in its home ports, would by no means be sufficient for those in its colonial ports.

Moreover, and leaving out of consideration the question of geographical situation, there is still an argument no less strong which leads us to ask that the number of the days of grace be not fixed absolutely.

[828] We can imagine the case of a war between two Powers, the one possessing a very large merchant marine and the other having no sea trade of any consequence.

¹ Annex 18.

The former will do its utmost to have the length of the period increased, the latter, on the contrary, will wish to begin its operations against the merchant marine of its enemy as soon as possible.

Such are some of the factors of the problem that has been submitted to us. As long as these differences exist and as long as the right of capture and of blockade are the rule, it seems to us reasonable that every Power should, as in the past, reserve the right to act according to its interests.

Nevertheless we believe that a belligerent must not only give notice of a blockade, but that he must in addition allow neutral vessels a proper period of grace before exercising his full power against them.

The British Government judges that it will be better not to establish fixed rules which might limit the rights of a belligerent in this respect, which in no way implies that days of grace should not be allowed as a general rule.

On the contrary, my Government fully intends to adhere to what has been done in the past for more than fifty years.

In case Great Britain should be a belligerent (which I hope will never happen), she would allow both enemy and neutral merchant ships a proper number of days of grace, with the reservation nevertheless that this period of grace should not compromise her national interests.

In a word, the Government of Great Britain supports the sentiments which instigated the Russian proposal, but at the same time we are of the opinion that this period must be considered as granted as a privilege and not as a right.

The **President** remarks that there is only one proposal, Russia's, which does not fix a definite period. It leaves each State entirely free on this point and in doing so it is not inaugurating an innovation. Such is also the trend of the British declaration, which does not consider days of grace to be a right but a privilege.

His Excellency Mr. Nelidow then proposes that question IV of the *questionnaire*¹ be modified as follows: Should days of grace be allowed merchant ships in enemy ports on the outbreak of war?

His Excellency Mr. Keiroku Tsudzuki then takes the floor and says:

Although Japan has always allowed days of grace to all vessels and in all ports, the Japanese delegation believes that in future there will not be sufficient reason for treating the vessels of belligerents which are subsidized by their governments in time of peace, to be converted into instruments of offensive warfare, as other than contraband of war, as set forth in the proposal of the honorable delegates of Russia. We are also of the opinion that the belligerent Power should have the right to take the necessary measures to indicate the ports in which the privilege in question will be allowed, as well as the restrictions placed upon the favor which it has the intention of granting, so that it may allow those concerned greater facilities in one port than in another. Again, we believe that if conventional stipulations are established on this subject, it would be better to fix a definite period than to indicate a period depending upon the time required to load or unload the cargo, which would seem to be an indeterminate [829] period, since in certain ports such operations can be completed in two or three days and in others they may last for weeks or even months.

Consequently while we accept the humanitarian principle which is laid down in the proposal of the Russian delegation, we stand at the same time with our

¹ Annex 1.

honorable colleagues of Great Britain in interpreting it as a privilege granted by a belligerent Power, and not as a right which can be demanded by the vessel in question.

Rear Admiral **Sperry**, after stating that the United States has always allowed days of grace, considers that it would be difficult to fix the number thereof in a conventional stipulation. The period will vary according to circumstances, according to the States involved in war, according to the ports where the enemy vessels are. The American delegation therefore admits that there is no difference of principle and that it is for the committee of examination to draft a provision which will take into account the contingencies and reservations that have been expressed.

The **President** is of the same opinion and asks the Commission to pass upon the question as formulated by his Excellency Mr. **Nelidow**.

His Excellency Lord **Reay**, after stating that the period of grace is a favor and not a right, declares that the British delegation will reply in the affirmative, with a view to setting aside the question of recognizing the right to this period of grace.

Brigadier General **de Robilant** points out that the discussion shows that the Commission is for the most part agreed upon the advisability of granting days of grace. The divergences of opinion that have arisen are with regard to the nature of this period. "Is it a right, is it a favor?" That is the starting point. It would therefore seem that it is not a question of voting on the advisability or inadvisability of days of grace, but rather as to whether this period is to be a right or a privilege. If the period is to be considered a right, the study of the rules which must govern this right can be entrusted to the committee of examination; in the contrary case there is no occasion to study the question of granting a favor, which must be left to the discretion of the grantor.

His Excellency Mr. **Nelidow** considers that the word "should" ("*doit*") in the question implies a duty.

His Excellency Lord **Reay** replies that a favor excludes the idea of an obligation and that such is the meaning of his vote.

His Excellency Count **Tornielli** thinks that if the question were worded as follows: "Is it desirable that days of grace be allowed enemy merchant ships stationed in the ports of one of the belligerent States?" it would better meet the ideas that have been expressed.

On motion of the **President**, the Commission replies in the affirmative to the question as formulated by his Excellency Count **Tornielli**.

His Excellency Mr. **Léon Bourgeois** believes that the double meaning of the word "*faveur*" has been lost sight of. The period of grace is in favor of merchant ships, and this favor depends upon the belligerent State. The real meaning of the question is as follows: Should a period of grace be allowed of which enemy ships stationed in the ports of one of the belligerents may avail themselves?

After an exchange of views between their Excellencies Lord **Reay** and Mr. **Keiroku Tsudzuki** on the impossibility of recognizing that enemy vessels have a right to days of grace, his Excellency Mr. **Léon Bourgeois** remarks that [830] the Commission has not passed upon the question of obligation. If it recognizes that days of grace constitute a right, it must codify that right and commit this task to the committee of examination. If it considers them

merely as a favor, depending solely upon the belligerent State, it has nothing further to do with the question, but it would seem that it should first take a stand upon the question of principle.

Their Excellencies Count Tornielli and Lord Reay adopt his Excellency Mr. LÉON BOURGEOIS' suggestions, but ask that the vote be postponed to the next meeting.

After ascertaining the Commission's assent, the **President** announces that at the next meeting a vote will be taken on the proposal of the delegation of the United States of America,¹ and, if there is occasion, the Belgian,² and the French³ amendments on the question of the inviolability of private property at sea will be discussed. Afterwards the Commission will take up the study of the definition of the term war-ships, and a vote will be taken on the obligatory character of days of grace.

The meeting adjourns at 5 o'clock.

¹ Annex 10.

² Annex 14.

³ Annex 16.

[831]

SIXTH MEETING

JULY 17, 1907

His Excellency Mr. **Martens** presiding.

The meeting opens at 10: 50 o'clock.

The **President** reads a bulletin, which has been distributed among the members of the Commission, stating that the program for the day calls for a discussion first of all of the inviolability of private property at sea.

Before beginning the discussion, the **PRESIDENT** states that he does not believe the Commission is prepared to approve the minutes of the last meeting, which were not distributed until yesterday evening, and to some of the delegates not until this morning.

The **PRESIDENT** informs the Commission that two delegates have asked leave to make some remarks on the question of inviolability of private property.

His Excellency Mr. **de Villa Urrutia** takes the floor and reads the following declaration:

The Spanish Government informed the French Government in a note dated May 16, 1857, to the Ambassador of France at Madrid that, while it appreciated the great value and the generous doctrine proclaimed by the Declaration of Paris and rejoiced at the international agreement concluded on the subject of the freedom of enemy goods under a neutral flag and neutral goods under an enemy flag, as well as on the effectiveness of a blockade, it could not at that time accept the abolition of privateering. The Royal Government, which has never wished to exercise the right, which it expressly reserved in 1857, of granting letters of marque, animated at the present time by the desire to aid in the unification of international maritime law, has charged me to bring to the knowledge of the Conference that it accepts the principle of the abolition of privateering and adheres to the Declaration of Paris in its entirety. (*Applause.*)

The **President** states that the Commission records with sincere gratitude the declaration made by the first delegate of Spain.

His Excellency Mr. **Choate** recalls that the Commission has declared the discussion on the American proposal ¹ closed and decided to pass to a vote without further discussion.

[832] His Excellency Sir **Ernest Satow** then takes the floor and speaks as follows:

Mr. President, I ask your permission to say a few words in explanation of the vote which we are going to cast.

The delegation of Great Britain has not considered itself called upon to reply in detail to the arguments presented in favor of the abolition of the right of capturing enemy merchant ships and their cargoes. But it may not be inad-

¹ Annex 10.

visible to recall that the abolition of the right of capture necessarily involves the abolition of commercial blockade. For the object of both measures is to hamper the commercial activities of the enemy and to deprive him, so far as possible, of the supplies which are indispensable for the maintenance of his economic life. On the other hand, as many of the delegates to the Conference have pointed out, as long as the term "contraband of war" is not confined to articles which are of such a nature that they can be used immediately for military purposes and as long as every Power considers itself individually authorized to include under this head all kinds of foodstuffs and raw materials used in peaceful industries, nothing would be easier than to give the exception as large a scope as the rule. It is therefore evident that the proposal to exempt from capture and confiscation belligerent merchant ships and their cargoes is merely an equivocation capable of misleading ill-informed public opinion.

Much stress has been laid upon opinions expressed by a number of English writers and statesmen in support of the proposal. These opinions for the most part date back to a rather remote period, when the conditions of commerce and of naval warfare were entirely different from what they are to-day. It would not be difficult for us to answer these quotations with others from the same source, but it will suffice to bring to the attention of the Commission a careful examination of the question made by a contemporary trans-Atlantic writer, whose eminent authority in this matter is universally recognized and who has declared himself unequivocally in favor of the right now in force.

As to the so-called humanitarian aspect of the question, the opinion of the delegation of Great Britain was expressed at a former meeting. It therefore seems to us useless to point out again that the abolition of the right of capture, even accompanied by the abolition of contraband of war, as well as of commercial blockade, would in no way diminish the inhumanity of war.

We seem to hear a voice enjoining us to keep—with moderation however—the eighth Commandment, but when we open our ears to hear its counsels with regard to the sixth Commandment, that voice is silent.

Allusion has been made to paragraphs 2 and 3 of the Declaration of Paris and there has been an attempt to prove that that Declaration, in granting immunity to enemy goods under a neutral flag, as well as to neutral goods under an enemy flag—with the exception of contraband of war in each case—aimed to render war less disastrous to maritime commerce in general. But it appears from the history of this Declaration that its real object was to reconcile the French rule of "free ships, free goods" with the English rule of the immunity of neutral goods under an enemy flag. It is clear that the effect of the new rule was to safeguard the interests of neutrals by protecting their goods from capture and their vessels from seizure, and that the intention was not to grant protection to belligerent commerce. We therefore regard our proposal to abolish con-[833] traband of war in the full meaning of the term as the only step forward in our day to develop the true principle of the Declaration of Paris. Regarding the proposal of the Belgian delegation,¹ amended by the declaration of the Netherlands,² we do not feel that we can accept it either. The advantages to the owners of vessels and cargoes seized and sequestered would be very dubious, while at the same time very onerous duties would be imposed upon belligerents. For these reasons the delegation of Great Britain will vote in the negative.

¹ Annex 14.

² Annex 15.

In compliance with our instructions, based upon a logic and reasoning that are, in our opinion, irrefutable, we find ourselves compelled to vote against the proposal of the delegation of the United States.

His Excellency Mr. Léon Bourgeois asks permission to state in a few words the reasons for the vote of the French delegation. As Mr. LOUIS RENAULT has explained, it is not a question now of voting on the principle of the inviolability of property at sea, but on the conditions under which that inviolability is to be admitted. It has always been admitted that the inviolability of private property was subject to certain reservations. The French delegation will therefore not vote for or against the principle, but merely on these reservations. The French proposal¹ states the conditions to which it subjects the right of capture. It cannot therefore cast an affirmative vote on the principle.

His Excellency Mr. Choate asks the Commission to proceed to a vote without further discussion.

The President, after reading again the American proposal,² asks that he be permitted to recall in this connection certain facts and to add certain personal observations. In order to express his thought, the President makes use of an expression employed in the French navy, he desires to find their position, so that the course to be followed may be clearly seen. The American proposal has called forth many others. The question was propounded in 1899. It was at that time studied to see whether it deserved discussion (*sous bénéfice d'inventaire*). Eight years have passed since then; we have therefore had time to prepare ourselves on the question, which now seems to have been exhaustively discussed. It is indisputable—witness the intermediate proposals which have been submitted—that there is not unanimity as to the application of the principle of inviolability of private property at sea. It is not for the Commission to discuss the reasons which the different Governments have for their stand, but it is no less true that there is a great deal of hesitation, many scruples and fears with regard to the question. The States evidently fear to adopt a solution whose consequences are unknown to them, to proceed in the dark. Many writers have written on the principle of inviolability of property at sea; they are far from agreeing on the question, even those belonging to the same country. The President recalls that the work he wrote forty years ago has been quoted. He was at that time a convinced advocate of inviolability, but since that distant time he has become more circumspect on this delicate question.

The historical facts in support of the American proposal suggest certain observations. The treaty which Prussia signed with the United States in 1785 sanctioned the principle of inviolability, but it must be remembered that that treaty was signed by a philosopher-king and a prince among philosophers, who for the rest had few illusions concerning the practical effect of the agreement; for they both knew that war between their countries was very unlikely. Again, a dispatch has been quoted which was sent in 1824 to Mr. MITTLETON, Minister of the United States at St. Petersburg, and in which Count NESSELRODE expressed himself as being in sympathy with the principle of the inviolability of private property at sea.

[834] But we must also take into consideration the dispatch of about the same date, in which Count NESSELRODE, writing to Count Pozzo di Borgo, Am-

¹ Annex 16.

² Annex 10.

bassador of Russia at Paris, excludes the possibility of a firm agreement on a question teeming with consequences that could not easily be estimated in advance. In 1856 Prince GORTCHAKOFF likewise expressed himself as strongly in sympathy with the abolition of the right of capture, but he too perceived the difficulties to which it would give rise.

From 1785 to the present day the principle which is being discussed by the Commission has only once been applied, namely, during the war between Prussia, Italy, and Austria of 1866. Those Powers declared to the world that there would be no capturing of merchant ships, but that war was of so short duration that it cannot be cited as a precedent. The most conclusive argument that has been advanced is the difference in the rules governing property on land and property on the sea in time of war, but this argument is based upon a misconception. The Conference of 1899 founded, as it were, a mutual insurance company against the abuse of force during land warfare. Nevertheless if such abuse of force be compared with the abuse of force at sea, it is found to be much more terrible. Whether or not the territory is occupied by the enemy, although pillage is at the present time prohibited, the military necessities which are recognized in Articles 47, 48, etc., of the 1899 Convention weigh very heavily upon the peasant as well as the property owner. They afflict him not only with moral but also with material suffering, which Conventions cannot eliminate at a time when force is stronger than right itself. If the principle of inviolability of private property at sea is not admitted, there are many ways in which individuals may escape the consequences of war. For example, they can sell their vessels and rebuild them at the end of hostilities. They will be in a much more favorable situation if the right of capture is suppressed; indeed, it will be a privileged situation, since their business will be increased and will be carried on to the detriment of enterprises on land which are paralyzed by invasion. It is for the Commission to consider from every aspect the action it is about to take in conformity with the instructions which the delegates have received from their Governments.

The PRESIDENT concludes his address as follows: Such, gentlemen, is an impartial statement of the whole question upon which you are to pass. In laying before you these historical facts and these documentary considerations, it has not been my intention to influence your votes or to declare myself as opposed to taking into consideration the proposal of the delegation of the United States of America.¹ I do not wish to take a stand either for or against the American proposal. My duty as President of this Commission is to make clear the ground on which we stand and to help with my feeble strength in getting our bearings on all the principal facts and arguments that have been presented to you on this very interesting and complicated matter.

His Excellency Mr. Choate again insists that the committee proceed to a vote.

The discussion being closed, a vote is taken, in which thirty-three delegations participate:

Voting for, 21: Germany (with the reservations made at the preceding meeting), United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, China, Cuba, Denmark, Ecuador, Greece, Haiti, Italy, Norway, Netherlands, Persia, Roumania, Siam, Sweden, Switzerland, Turkey.

¹ Annex 10.

[835] *Voting against*, 11 : Colombia, Spain, France, Great Britain, Japan, Mexico, Montenegro, Panama, Portugal, Russia, Salvador.

Abstaining: Chile.

The President calls attention to the respective populations represented by the opinions expressed. In this respect, and taking into account also the maritime power of the States participating in the vote, it is hardly possible to consider it as decisive.

His Excellency Baron von Macchio explains as follows the reasons for Austria-Hungary's vote, as well as the point of view of the Austro-Hungarian delegation on the intermediate proposals:

The delegation of Austria-Hungary has from the beginning of the discussion defined in general terms its point of view on the right of capture.

It has fully taken into account the difficulties which this question involves and which have been brought to light by the noteworthy addresses on the subject delivered in the course of the last few meetings of this Commission.

It believes that all improvements on which a general agreement could be reached would constitute real progress as regards the practice now in vogue and the rather vague rules which govern the matter.

That is why this delegation subordinates its broader point of view to the more limited proposals which nevertheless seem to be a step on the road of progress, and that is why it has given its full support to the project submitted to this Commission by the declaration of the United States of America, which project ¹ has just been voted upon.

Nevertheless it has the highest consideration for the intermediate proposals made by the delegations of Belgium,² of France ³ and of the Netherlands,⁴ as well as of the United States itself, aiming to bring together the divergent points of view that still exist, and it therefore reserves the right to vote later on in favor of such a proposal as can readily secure the votes of all and thereby contribute to a wider recognition and more complete development in generally accepted international law of the principle of inviolability of enemy private property at sea in time of war.

His Excellency Mr. van den Heuvel remarks that the Belgian delegation has already made known the reasons underlying its proposal.² It has endeavored to prepare a compromise based upon principles of equity, which should take into account the various demands of the different delegations. It does not measure respect for law by the size of the population; but it believes that where well-intentioned Governments are concerned, which have long held differing views as to the measures which necessity forces and permits to be taken under such circumstances, we must discover a method of conciliation in mutual concessions which can be made without abandoning essential rights and without disregarding the rules of justice.

The Belgian proposal provides for what the most irreconcilable on both sides may demand. There is reason to hope that the Commission will appreciate the reasons which inspired this proposal and will be glad to support it.

¹ Annex 10.

² Annex 14.

³ Annex 16.

⁴ Annex 15.

His Excellency Mr. Choate states that the delegation of the United States will not take part in the discussion on the intermediate proposals, since it has secured a favorable vote on its proposal,¹ and that having received all that [836] it desired, it could not now accept half. It is not, however, opposed to such discussion by the others.

His Excellency Mr. Hagerup observes with regard to the declaration of the United States that it is not a question of a final vote but of coming to an understanding as to the proposals which will be submitted to the plenary sessions. There is, moreover, no inconsistency in voting first on the principle laid down by the American delegation and also on the proposal of the Belgian delegation.

His Excellency Mr. Tcharykow thinks that the delegation of Russia, while highly appreciating the conciliatory intentions of Belgium, cannot escape the conviction that this project contains a very considerable number of provisions and rules whose immediate adoption and application would present difficulties which it cannot disregard. Therefore it is because of this circumstance that the delegation of Russia finds itself compelled to vote in the negative on the proposal in question.

His Excellency Vice Admiral Jonkheer Röell explains the reasons which suggested to the delegation of the Netherlands its amendments to the Belgian proposal.²

Mr. Heinrich Lammasch remarks that in a parliamentary assembly it would be inconsistent, after a favorable vote on the principal question, to vote on an intermediate question. This, however, is not such a case. The proposals must, so far as possible, obtain a unanimous vote; therefore there is no inconsistency. It would not be inconsistent, in his opinion, even if the United States supported a subsidiary proposal, after having received a favorable vote on its own proposal.

His Excellency Count Tornielli says that Italy defined in a preceding meeting its position on this question and it has not changed its attitude. But the Italian delegation desires to state that it adheres to the considerations which have been set forth by the delegation of Austria-Hungary and that it will take part in the vote on the intermediate proposals that have been presented.

His Excellency Mr. Ruy Barbosa, who voted for the American proposal, will nevertheless vote for intermediate proposals which, like that submitted by the Brazilian delegation,³ would mark an advance on the road toward inviolability.

His Excellency Mr. van den Heuvel thanks the delegation of the Netherlands for having collaborated in the Belgian proposal by means of its amendment. He then appeals to the good-will of the United States. If it were admitted that when a vote on an intermediate proposal was taken after a vote on the principal proposal, it would be inconsistent to support the intermediate proposal, it would be impossible to arrive at a conciliatory measure. The Brazilian proposal and the Belgian proposal lay down rules which are more favorable to private property than those now in force. They mark a step forward toward the inviolability of the rights of individuals. They reflect an intention of equity and justice, which the United States cannot disregard.

His Excellency Mr. Léon Bourgeois expresses the same opinion as his

¹ Annex 10.

² Annex 15.

³ Annex 11.

colleagues. He observes that the proposals follow a descending scale, that is to say they approach inviolability more or less. He thinks that if the Commission wishes to reach an agreement, it should examine the proposals in descending order and vote first upon those proposals which most nearly approach the principle of immunity. He asks especially that they vote on [837] a specific text; for instance, that they vote on taking up the discussion of the Belgian proposal. An affirmative vote will mean that they will take up its discussion; it cannot bind them on the text as a whole. That text may be changed or even finally rejected.

His Excellency Sir **Ernest Satow** objects to considering the Belgian proposal.¹ He objects to its principle and does not believe that a modification of its articles can bring the British delegation to change its opinion on the principle.

Their Excellencies Messrs. **Ruy Barbosa** and **A. Beernaert** believe that, in order to comply with his Excellency Mr. **LÉON BOURGEOIS'** *wœu*,² the Commission should vote first on the Brazilian proposal.³

His Excellency Mr. **Choate** says that the delegation of the United States will not take part in the discussion on the Belgian proposal, since it will not secure a unanimous vote. He prefers to rest on the votes of twenty-one States for the American proposal.

The **President** proposes that a committee of examination be appointed to elaborate a project which may perhaps meet the approval of all the Governments, only he doubts that such a result can be attained.

His Excellency Mr. **Choate** believes that his proposal can secure a unanimous vote at a plenary session.

His Excellency Mr. **Léon Bourgeois** insists upon a vote on a specific text. There is no other way of proceeding if the Commission wishes to reach results. With a specific text there can be discussions on amendments and modifications, and the Commission will thus by mutual consent arrive at an improvement of the present situation.

His Excellency Mr. **Choate** cannot see the use of a discussion on the above-mentioned proposals, if two of the great Powers declare that they do not accept them. He does not despair of converting Great Britain and Russia to the principle of inviolability.

His Excellency Mr. **Nelidow** thinks that under these circumstances discussion of the Belgian proposal would be fruitless.

The **President** asks the Commission to postpone to its next meeting, which will take place on Friday, the vote on the Brazilian proposal³ and on the Belgian proposal¹ with the amendments of the Netherlands.⁴

The meeting adjourns at 2:15 o'clock.

¹ Annex 14.

² Annex 16.

³ Annex 11.

⁴ Annex 15.

SEVENTH MEETING

JULY 19, 1907

His Excellency Mr. Martens presiding.

The meeting opens at 2:15 o'clock.

At the request of the President the minutes of the fifth meeting are adopted. The Commission decides to postpone to the next meeting any observations which the delegates may have to make on the minutes of the last meeting.

The President recalls that according to the program determined upon at the last meeting the question to be discussed is the inviolability of private property at sea.

The Commission is to vote on proposals made by the delegation of Brazil,¹ by the Belgian delegation² with amendments proposed by the delegation of the Netherlands,³ and, finally, on the *vœux* proposed by the French delegation.⁴ General discussion is closed and a vote is to be taken. The Commission will decide, in the first place, whether it will take the Brazilian proposal under consideration; after this vote it will decide whether it can pass to a discussion of its articles and whether it should vote on the other proposals.

The President reads the Brazilian proposal.¹

The Commission proceeds to vote; 25 delegations take part therein.

Voting for, 13: Germany, Austria-Hungary, Belgium, Brazil, Greece, Italy, Norway, Paraguay, Netherlands, Portugal, Siam, Sweden, Switzerland.

Voting against, 12: United States of America, Bulgaria, Cuba, France, Great Britain, Japan, Mexico, Montenegro, Persia, Roumania, Russia, Turkey.

His Excellency Mr. Ruy Barbosa makes the following declaration:

Although the Conference has decided to take under consideration the proposal which I presented, in view of the vote that has been cast and the attitude of the Powers who have declared themselves opposed to any intermediate solution, there would be no advantage in a debate on the Brazilian proposal, [839] which is of the broadest scope. Not desiring, therefore, to force a useless discussion, I ask permission to withdraw the Brazilian proposal, only regretting that this Conference will end without deciding one of the most important questions on our program.

His Excellency Mr. van den Heuvel takes the floor and says:

Before passing to a vote, I desire to repeat for the last time that the Belgian proposal is inspired only by the spirit of justice and humanity. It was formulated in the hope of conciliation, but its authors have not deceived themselves with regard to the objections that it may encounter.

¹ Annex 11.

² Annex 14.

³ Annex 15.

⁴ Annex 16.

It may assuredly be pointed out that its realization involves the inconvenience of a lengthy conveying of prizes for States which do not possess ports scattered over every quarter of the world. But such a consideration would not seem to be more decisive as regards this possibility than it has been in other matters in which it has frequently been urged.

It is not decisive in the eyes of those who believe that the destruction of neutral prizes can no longer be permitted and who propose that captor States be compelled to detain and guard them.

Nor is it decisive in the eyes of those who believe that the right of provisioning fleets and the right of shelter in neutral ports should be reduced by absolutely uniform rules and without the slightest distinction as to the number and location of the ports and coaling stations which the States may possess.

Again, it may undoubtedly be remarked that the Belgian proposal would entail deductions and settlements at the end of the war. But the fear of unsurmountable embarrassment would be manifestly excessive. If it had been thought right to stop before similar difficulties in the matter of land warfare, the system of indemnities and receipts would not have been favored; that is to say, the financial settlement which respect for private property requires at the end of hostilities.

The two principal objects which the Belgian proposal strives to accomplish appear to be the wish of modern public opinion, which resolutely desires to diminish the useless severities of war. It is necessary to eliminate in naval warfare confiscations, which so clearly despoil individuals. It is also necessary to leave at liberty the crews of merchant ships who have never had a thought of hostility and who toil and struggle only to support their homes.

The **President** observes that the Commission's vote is to be on the Belgian proposal¹ with the amendments of the delegation of the Netherlands.²

The Commission proceeds to vote; twenty-eight delegations take part therein.

Voting for, 23: Germany, United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, Cuba, Denmark, France, Greece, Italy, Mexico, Norway, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Siam, Sweden, Switzerland, Turkey.

Voting against, 3: Great Britain, Japan, and Russia.

Abstaining, 2: Montenegro, Serbia.

It is decided to consider the proposal.

[840] The **President** asks whether under these conditions the Belgian delegation maintains its proposal.

His Excellency Mr. **A. Beernaert** states that in view of the result of the vote his reply must be in the affirmative.

The **PRESIDENT** asks Mr. **Fromageot** to read the first article of the Belgian proposal:¹

ARTICLE 1

Enemy merchant ships, as well as enemy goods under the enemy flag, may not be seized and detained by a belligerent except on condition that they be returned at the end of the war.

¹ Annex 14.

² Annex 15.

His Excellency Mr. van den Heuvel points out with regard to this subject that Article 1 of the proposal formulates the general principle, that is to say, it recognizes the right to seize, the right to detain until the conclusion of hostilities, but, on the other hand, it imposes the obligation to return.

The Netherland proposal¹ makes two changes in the Belgian text: (1) it makes a distinction between the cargo and the vessel: it retains the principle contained in Article 1 with respect to the vessel, but it transfers to a subsequent article the determination of the rights of the captor with respect to the cargo. The Belgian delegation makes no objection to the adoption of the distinction proposed in the Netherland amendment. It will declare itself later on the right to sell the cargo. (2) The Netherland amendment modifies in another respect the text of Article 1. It confines itself to stating that belligerents have the right to seize and detain the vessel until the conclusion of hostilities; it does not mention expressly the obligation of restoring it.

But it would seem that the obligation of restoring it is implied in the words "detained by him until the end of the war." His Excellency Mr. VAN DEN HEUVEL asks, however, in order that there may be no possible doubt, whether such is the interpretation that should be given to the amendment of the Netherland delegation.

His Excellency Vice Admiral Jonkheer Röell states that such is likewise the interpretation given the amendment in question by the delegation of the Netherlands.

His Excellency Mr. Léon Bourgeois asks for an explanation of the meaning of the word "detained" ("*retenus*") used in Article 1.

In reply to this question, his Excellency Mr. van den Heuvel states that in the opinion of the Belgian delegation the same rules with regard to the determination of the ports to which prizes may be taken must be applied to enemy prizes as to neutral prizes.

Lieutenant Colonel van Oordt adheres as follows to the declaration of his Excellency Mr. VAN DEN HEUVEL:

In the Belgian proposal the right of capture and of sequestration is formulated negatively. Although the Netherland delegation fully adheres to this restriction, it does not consider it as absolutely necessary in Article 1, since from Articles 9, 9a, and 10 it clearly follows in a way that admits of no doubt that the vessels stopped and detained must be restored at the end of the war.

The Belgian proposal is entitled as follows: Proposal relative to the Rights of Belligerents with respect to Enemy Private Property in Naval Warfare; that is to say that when this proposal is converted into a convention, it [841] will be forbidden to take action with regard to private property, which is manifestly at variance with the stipulations of Articles 9, 9a and 10.

It follows that the restriction in Article 1 of the Belgian proposal does not appear to be strictly necessary, as it is already contained in an absolute and more complete manner in the above-mentioned articles.

But there is still another observation that might be made as to the wording of the amendment. An agreement upon the question of inviolability of private property at sea could perhaps be secured, if there were inserted in the convention

¹ Annex 15.

a stipulation giving the belligerent captor the right to collect a certain tax from the owners of seized vessels and of enemy cargoes.

The Netherland delegation has frequently expressed its adhesion to the proposal of the United States of America.¹ But in order to advance as far as possible in the direction of inviolability of private property at sea, it would adhere to any proposal of this character. Perhaps a tax collected on enemy vessels and their enemy cargoes might form a compromise.

The wording of the amendment does not exclude, while the somewhat absolute wording of Article 1 unamended might be considered as excluding once for all, any tax to be collected from the owners at the time of restitution. In a word, the amendment makes no change in substance, since this substance is contained in Articles 9, 9a and 10, but it will perhaps be more acceptable to those who wish to participate in the establishment of the principle of inviolability without excluding the right to collect a tax from the owners.

Mr. Louis Renault makes certain inquiries as to the scope of Article 1. Taking note of the declaration made by his Excellency Mr. VAN DEN HEUVEL, he remarks that in such a case it will be required to apply to enemy prizes the restrictions now in force in the matter of the stay of neutral prizes in foreign ports. But this situation is not favorable to Powers who have no ports in different quarters of the world and, so far as the latter are concerned, would be equivalent to an implied recognition in a disguised form of the inviolability of private property at sea, since the destruction of prizes would be prohibited.

His Excellency Mr. van den Heuvel does not quite understand the objections which Mr. LOUIS RENAULT has just made. The Belgian proposal does not constitute, either in form or substance, a disguising of the principle of inviolability of private property at sea. It gives such property less protection than the American proposal, but greater protection than the system now in force, which allows the seizure and confiscation of enemy vessels.

He recognizes the fact that certain States will have greater facilities than others—those having ports scattered over the whole earth where they can take their prizes.

But he makes two answers to this practical objection. The first is that the rules of the law of war have a differential influence on the various States according to their power, their wealth, their geographical situation. The second answer is that the Belgian proposal confines itself to extending to enemy prizes the rules observed with regard to neutral prizes: both may be brought to the same ports.

If Mr. RENAULT thinks that it would be advisable to modify the system now followed with respect to neutral prizes before extending it to enemy prizes, will he kindly submit an amendment?

[842] Belgium will examine it with the most ardent desire to bring about any simplifications and facilities that may be proposed from the belligerent point of view, provided they do not jeopardize the interests and rights of neutrals.

His Excellency Mr. Nelidow desires to explain the reasons for the negative vote which the Russian delegation intends to cast on the article under discussion. From the beginning of the debates the delegation of Russia, while recognizing

¹ Annex 10.

the liberal character of the American proposal, has not considered itself able to adopt it, for, in its opinion, it has not been sufficiently demonstrated to what extent this proposal is susceptible of practical application. Again, the argument which places private property at sea on the same footing as on land seems to it inexact.

It has long been admitted that in war on land property which was not of use to belligerents was inviolable. It is, however, none the less true that invasion is itself a violation of private property and that there would be a certain amount of injustice in applying to maritime commerce a privileged system which property on land could not enjoy. It is, moreover, indisputable that in warfare on land the lower classes suffer more than all others, while at sea war reaches above all big corporations, and individuals are affected only indirectly. Such are the arguments that have decided the Russian delegation to vote against the inviolability of private property at sea and against Article 1 of the Belgian proposal.¹

At the request of the **President** seconded by his Excellency Sir **Ernest Satow**, the Commission proceeds to vote on Article 1 of the Belgian proposal. Thirty delegations take part therein:

Voting for, 14: Austria-Hungary, Belgium, Brazil, Bulgaria, Denmark, Greece, Italy, Norway, Paraguay, Netherlands, Persia, Roumania, Siam, Sweden.

Voting against, 9: United States of America, Cuba, Spain, Great Britain, Japan, Montenegro, Nicaragua, Portugal, Russia.

Abstaining, 7: Germany, France, Mexico, Peru, Serbia, Switzerland, Turkey.

His Excellency Mr. **A. Beernaert** notes with regret that the Belgian proposal has not been so favorably received as he had hoped and to avoid a useless waste of time for the Commission, he deems it advisable to withdraw it.

In acknowledgment of his remarks, the **President** states that he is sure that he is interpreting the feelings of the Commission in thanking the first delegate of Belgium for having so kindly cleared by means of his proposal the ground upon which the discussion bears. He then asks whether the Commission has any objections to make to the *varu*² which the French delegation proposes that it accept.

His Excellency Mr. **van den Heuvel** regrets to state that the Belgian delegation cannot support the compromise proposal presented by the French delegation.

This proposal sanctions the right of confiscation of all enemy property, in naval warfare, to the benefit of belligerents. It confines itself to expressing a *varu* favoring regulation by the domestic legislation of each nation.

[843] The Belgian delegation cannot adhere to a *varu* which might be regarded as proclaiming the necessity in modern warfare of so exorbitant a right as general confiscation, and which would appear to be postponing indefinitely the hope of its abolition.

Mr. **Louis Renault** replies that the right of capture not having been abolished, there could be no inconsistency in the Belgian delegation's endeavor to humanize it. The result of the vote has proved that Belgium's intermediate position had no chance of succeeding. There is no reason, therefore, why the Commission should not support a *varu* tending to improve the existing right. It

¹ Annex 14.

² Annex 16.

cannot be a matter of indifference that the right of capture be exercised like all war operations without seeking personal profit, which would make it odious. Also by seeking a means of indemnifying individuals for their losses by having these losses borne by the nation as a whole, we would subject the right of capture to more humane conditions. Mr. LOUIS RENAULT reads the concluding sentences of the French delegation's declaration. He thinks that the arguments therein set forth in support of the *vœux* which it contains make it difficult to refuse to accept these *vœux*. The French Government has endeavored to diminish abuses. While waiting until it can go further in the matter of the abolition of the right of capture, it has wished to eliminate from it all that it contains of a demoralizing character.

His Excellency Mr. A. Beernaert is not insensible of the considerations that Mr. LOUIS RENAULT has set forth, but he thinks that the Conference cannot, without exceeding its scope, adopt provisions aiming to modify the domestic legislation of States.

His Excellency Mr. Ruy Barbosa expresses the same opinion, adding that personally he would adopt the *vœux* proposed by the French delegation.¹

His Excellency Sir Ernest Satow says that an English Royal Commission is now studying the question of compensation for captured national ships. Under these conditions it is not possible for the delegation of Great Britain to adopt a *vœu* which would prejudice the outcome of this study. So far as concerns the *vœu* looking to the suppression of prize shares, his Excellency Sir ERNEST SATOW, while greatly in sympathy with the principle, is obliged to state that no instruction from his Government authorizes the British delegation to adopt it. If such an instruction is later received, he will be glad so to inform the Conference.

His Excellency Mr. Nelidow states that the Russian delegation is in the same situation as that of Great Britain. It is in sympathy with the *vœu* of his Excellency Mr. LÉON BOURGEOIS, but the realization of this reform is in the jurisdiction of the Russian Government; the delegation has nothing to do with it.

His Excellency Mr. Keiroku Tsudzuki informs the Commission that Japan has never known the system of prize shares. Moreover, in the absence of instructions, he can only abstain from voting on the *vœu* of the French delegation concerning the principle of an indemnity.

His Excellency Count Tornielli thinks that, after this discussion, the vote should be postponed for two weeks. The Commission would then be in a position to find out the number of supporters of the reform proposed by the French delegation.

On the motion of the President and the opinion of his Excellency Mr. Léon Bourgeois in conformity therewith, the Commission decides to postpone for two weeks, without further discussion, the vote on the French proposal. [844] The President regrets that the Commission has not reached a unanimous opinion on this important question. It has not, however, wasted its time, since it has heard some very interesting debates and has gratefully made official record of the declaration of his Excellency the first delegate of Spain, who, in the name of his Government, has adhered to the Declaration of Paris of 1856. (*Applause.*)

The PRESIDENT regrets that the Commission has not been able to reach an

¹ Annex 16.

agreement on the question of inviolability of private property at sea; but he believes that the divergences of opinion which have manifested themselves are the result of lack of experience and practice. The Commission is nevertheless in agreement upon one point: the amelioration and humanization of the right now in force. That is why the PRESIDENT is submitting a *vœu* whose adoption does not require special instructions, but which will express on the part of the States unanimity and union, which make for strength. From EPAMINONDAS to GUSTAVUS ADOLPHUS, who drew his inspiration from the Gospel and who always kept on his desk the classical treatise of HUGO GROTIUS, *De Jure Belli et Pacis*, those in command of armies have always been advocates of discipline in armies and have practiced the duties of humanity. In the matter before us at present—that is to say, the inviolability of private property at sea—precedents, which we lack, play a decisive part. If peace should unfortunately be broken, it would perhaps be desirable for the States to try the experiment of agreeing among themselves to renounce the right of capture. It is very natural to announce this desire in the first place with regard to the Powers who support the proposed new principle. At present we know of only two historical facts which constitute valuable precedents in this matter. At the time of the war of 1866 Prussia, Austria, and Italy renounced with one accord the exercise of the right of capture. The Austro-Hungarian Government issued on May 13, 1866, an ordinance reading as follows:

ARTICLE 1. Merchant ships and their cargoes may not, merely because they belong to a country with which Austria is at war, be captured at sea by Austrian war-ships or declared lawful prize by Austrian prize courts, if the enemy Power observes reciprocity toward Austrian merchant ships. The observance of reciprocity is admitted, until there is proof to the contrary, when just as favorable treatment on the part of the enemy Power is guaranteed by the known principles of its legislation or by declarations emanating from that Power at the beginning of hostilities.

ARTICLE 2. Article 1 is not applicable to vessels carrying contraband of war or vessels which violate a blockade that is legally binding.

On its side the Prussian Government issued on May 19, 1866, the following ordinance:

On the proposal of the Minister of State, I decree that in case of war merchant ships belonging to the subjects of the enemy State shall not be captured by my war-ships provided the enemy observes reciprocity in this respect. This provision shall not be applicable to vessels which would be liable to capture, even if they were neutral.

The Austrian Government having by imperial ordinance of May 13 last declared that it would conform to the principle of reciprocity as set forth in Article 211 of the Code of the Merchant Marine of the Kingdom of Italy, the abolition of the right to capture and take as prizes merchant ships on the part of the war-ships of the State, which abolition is proclaimed by the aforesaid Article 211 of the Code, is put into full force during the present war [845] between Italy and Austria, except as regards vessels carrying contraband of war or vessels that attempt to violate a blockade. All in conformity with the aforesaid Code.

Finally, this example was followed by the Italian Government, which, conforming itself to its domestic legislation, issued the ordinance of July 20, 1866.

In this war, which was of short duration, there were no captures of enemy merchant ships, and it is a fact which the Commission must bear in mind, because it is an interesting precedent of an agreement made on the eve of a war with the view of relieving enemy vessels of the risks of war.

Another fact which is not known deserves the attention of the Commission. In 1853, at the time of the Crimean war, the Russian Government had elaborated detailed regulations concerning prizes and letters of marque, but the French and English Governments proposed to Russia that she should not issue letters of marque. She consented, and they agreed not to practice privateering.

These historical facts have indisputably a great historical and practical importance. They prove that in future States which are on the eve of war can, if one of them takes the initiative, come to an agreement to abolish the right of capture for the duration of the war that has begun. If the belligerent States in future wars agree to abolish the right of capture, with the restrictions required by military necessities, precedents will be created, and the Powers will be in a position to note the results of freedom of enemy commerce. In a word, we must create precedents and make it possible for States to see clearly in this important matter.

Such are the reasons inspiring the *væu* whose text is as follows:

The Fourth Commission is unanimous in recognizing the liberal sentiments which have inspired the proposal made by the delegation of the United States of America,¹ namely, to declare the inviolability of private property in time of naval warfare, and it thanks that delegation most sincerely.

Nevertheless, in view of the great divergence of opinions on this matter and in view of the absolute uncertainty that exists with regard to the effect of putting this new principle into practice, and considering that a new international law could be proclaimed by the Conference of Nations only on the basis of actual experience, the Fourth Commission expresses the following *væu*:

That the Powers represented at the Second Peace Conference, in the event of war in future, will, immediately after the outbreak of hostilities, declare of their own accord whether they have decided and under what conditions to renounce the right of capturing merchant ships during the war that has begun.

The PRESIDENT believes that the *væu* which he proposes for adoption will safeguard the freedom and independence of the States. If it can be realized, a wider horizon will be opened toward the noble and sublime goal toward which the Commission is striving.

His Excellency Mr. van den Heuvel, in the name of the Belgian delegation, joins in the generous idea which has dictated the President's *væu*, but he cannot at the present moment declare himself with regard to the adoption of its preamble and he asks the Commission to postpone its vote for two weeks, when the French delegation's *væu* is to be voted on.

He is also of the opinion that some trace of the generous sentiments with which the Commission was inspired should remain in existence, but he hopes to see this trace inscribed in a code of international law. Great Britain has [846] filed a proposal aiming to modify the laws of war with regard to the crews of captured enemy ships.² At the present time all men who man an

¹ See annex 10.

² Annex 45.

enemy merchant ship seized by a belligerent are made prisoners without distinction of nationality. The British proposal aims to establish a distinction among them. It proposes to give neutral seamen their liberty, but to consider other seamen prisoners of war. That is only half justice, for all these men are peaceful. They are toilers of the sea who deserve our solicitude; they are not combatants or auxiliaries.

With the view of leaving behind us a trace of the labors of the Commission, the Belgian delegation will file a proposal¹ extending to seamen belonging to the nationality of the belligerent State the privilege which the British delegation reserves to neutral seamen.

His Excellency Mr. Choate requests that the President's *vœu* be printed and distributed.

His Excellency Sir Ernest Satow joins in this request. He adds that the British delegation will have certain scruples in regard to prescribing a course of conduct for its Government. He is convinced that if his country should unfortunately be implicated in war, it would act in accordance with the ideas of equity and justice which have always guided it.

After this exchange of views the President makes the following declaration:

The sole purpose of my declaration is to show the only practical way for the Powers to succeed in accomplishing the reform extolled by the delegation of the United States of America and supported by many of the States here represented.

But if the expression of a simple wish to imitate the example set in 1854 and 1866 by certain belligerent States could be regarded as an attack on the sovereignty of the Powers, I hasten to withdraw my proposal.

His Excellency Mr. van den Heuvel repeats that the Belgian delegation will file an amendment to the British proposal.

The Commission decides to postpone for two weeks the vote on the British proposal² and on the Belgian amendment.¹

The Commission decides to take up the discussion of question II of the *questionnaire* concerning the conversion of merchant ships into war-ships and of paragraph B of the British proposal.³

His Excellency Mr. Gonzalo A. Esteva presents an amendment on this subject to the proposal of the Austro-Hungarian delegation⁴ on the reconversion of merchant ships already converted into war-ships:

Mr. President, I thank you for having so kindly given me the floor. I have not requested it in order to re-open the discussion. I only want to say a few words on the proposal of the honorable delegation of Austria-Hungary concerning the reconversion of merchant ships which have already been converted into war-ships.

At the meeting of the 12th instant I had the honor to communicate to the Commission, in accordance with the instructions of my Government, the fact that Mexico adhered to the Italian proposal⁵ on the conversion of merchant ships into war-ships.

¹ Annex 46.

² Annex 45.

³ Annex 2.

⁴ See Mr. HEINRICH LAMMASCH's declaration at the second meeting, *ante*, p. 747 [745].

⁵ Annex 4.

[847] By this declaration my country gave up privateering, on which it had counted as a possible means of national defense at sea, and it entered without hesitation into the new course of international maritime law, whose present tendencies show themselves so plainly in this Conference.

Our eminent colleague, Mr. LAMMASCH, in the name of the delegation of Austria-Hungary, has presented the following proposal to the Commission:

The conversion shall be permanent as long as hostilities last and reconversion shall be prohibited.

Our distinguished colleague, in the address which he delivered in explanation of his proposal, informed us that the delegation of Austria-Hungary intended that it should not be permitted in the course of the same war to reconvert into a merchant ship a merchant ship which had been converted into a war-ship, but only after the cessation of hostilities.

In conformity with what has been said by Mr. LAMMASCH and provided the honorable delegation of Austria-Hungary should be in accord with our idea, the delegation of Mexico would suggest that the last sentence of the proposal be changed to read as follows: "Reconversion shall not be permitted until after the cessation of the war."

The complete proposal would then read:

The conversion shall be permanent as long as hostilities last and reconversion shall not be permitted until after the cessation of the war.

The delegation of Mexico will then have the honor to support the proposal of the delegation of Austria-Hungary.¹

His Excellency Sir Ernest Satow asks permission to go back to the proposal about which his Excellency Mr. VAN DEN HEUVEL was speaking. As the British proposal² has for its object the placing of seamen on board a captured vessel on the same footing as the inhabitants of a city taken by storm, he thinks that the discussion had better take place at the end of our proceedings.

His Excellency Mr. van den Heuvel replies that the Belgian proposal,³ as well as that of Great Britain, concerns the question of prizes and therefore it would seem that they should be discussed two weeks hence as a conclusion to the present debate.

His Excellency Sir Edward Satow is of the same opinion as his Excellency Mr. VAN DEN HEUVEL and accepts discussion of the proposal two weeks hence.

His Excellency Lord Reay takes the floor and speaks as follows upon paragraph B of the British proposal with regard to the definition of an auxiliary vessel:

GENTLEMEN: You have before you the definition of the term "war-ship" which the British delegation has the honor of submitting to you.

It seems to me advisable to speak a few words in explanation, calling your attention to the conditions of naval warfare in our day, which, you will agree, are very different from what they were in the time of SUFFERN, of NELSON, or of PAUL JONES.

Formerly, gentlemen, the wind was the indispensable element, without which

¹ See Mr. HEINRICH LAMMASCH's declaration at the second meeting, *ante*, p. 747 [745].

² Annex 45.

³ Annex 46.

a fleet became paralyzed in its movements. To-day it is coal which plays the principal part, and without it a modern squadron cannot navigate and finds itself unable to escape from the pursuit of the enemy. It is therefore indispensable for ships of war to coal and to organize for this purpose a collier service to accompany the fleet. It cannot be contested that these colliers form an [848] integral part of the belligerent fleet and that the enemy will always endeavor to get possession of them whatever flag they fly. Suppose a belligerent squadron should encounter vessels loaded with coal, do you believe it would hesitate to seize them as forming part of the enemy's squadron? For my part, I do not think so.

Neutral vessels engaged in this supply service are rendering one of the belligerents unneutral assistance, which the adversary cannot recognize as lawful, and they therefore expose themselves to all the consequences which flow from the state of belligerency. The furnishing of fuel, provisions, or munitions by a neutral vessel accompanying or escorting a belligerent squadron constitutes an infraction on its part of the general rule prohibiting a neutral from carrying aid directly to a belligerent. It is no longer a question of a simple commercial enterprise but of an act of participation in the war operations.

Vessels engaged in this furnishing of supplies or those charged with making repairs or the carrying of dispatches are indirectly under the orders of the competent authorities of the belligerent. They are incorporated in his naval forces, whether they be armed or not or whether they are sailing in company with the fleets of the belligerent or awaiting order or the arrival of his war-ships, either at sea or in port.

Their belligerent character is therefore incontestable, since they are taking an active part in the war operations.

Owners who thus put their vessels at the disposal of one of the belligerents expose them by this act to all the risks and perils incurred by the war-ships of the belligerent to whom they give this unneutral aid. To recognize their acts as lawful would have the effect of prolonging the war and extending the theater of hostilities. We believe, gentlemen, that the adoption of our proposal would result in giving wider protection to neutrals and in limiting belligerent forces to national forces, which alone, in our opinion, should be arrayed against one another.

It is understood that the rule would apply only to vessels under the aforesaid conditions which are rendering the services mentioned. To our mind, there cannot be any doubt as to the unneutral character of services rendered under these conditions.

According to these conditions, the vessels will be placed under the direct or indirect orders of a belligerent Government or of the commanding officer of a belligerent squadron. They will from time to time be incorporated in a belligerent squadron or attached to it, according to circumstances. They will be used for the transportation of seamen or soldiers, munitions of war, coal, provisions, or naval supplies, or charged with making repairs, or with the transmission of dispatches or of information to the squadron to which they are attached.

Under such conditions they will be considered as rendering unneutral aid to the enemy.

His Excellency Vice Admiral Jonkheer Röell asks his Excellency Lord REAY whether acceptance of the definition contained in the British proposal

could give the war-ships mentioned under paragraph B, which are really merchant ships and may even be neutral, all the rights possessed by war-ships, for instance, the right of search, or even the right to capture belligerent or neutral vessels, without requiring them to fulfill the conditions upon which we have held such lengthy discussions.

This question is evidently superfluous, for the answer must be in the negative; but then why call a vessel a "war-ship" which cannot have the right to perform acts of war? I believe that the object sought by the British [849] proposal would be much better attained by inserting a stipulation concerning auxiliary vessels in the regulations governing belligerent war-ships in neutral ports rather than by placing it in the proposal we are now discussing relative to the conversion of a merchant ship into a war-ship.

His Excellency Mr. Porter says that apparently the object of the classification of unarmed merchant ships engaged in unneutral service for the enemy fleet as enemy war-ships in paragraph B of the proposal of the British delegation is to give belligerents the same summary jurisdiction over them as that exercised over regularly commissioned armed vessels; that is to say, they may be seized or destroyed without recourse to a prize court before or after the act.

According to the rules of international law as they exist at the present day, a vessel engaged in unneutral service is liable to condemnation by the courts and its crew may be held as prisoners of war, but the delegation of the United States of America cannot look with favor upon so formidable an extension of the rights of belligerents with respect to neutral vessels under an artificial classification as enemy war-ships.

This proposal substitutes, in effect, the decision or whim of a subordinate officer of the belligerent fleet for the decisions of a prize court, and the neutral vessel may be sunk by his order.

Colonel Ovtchinnikow of the Admiralty believes that the objections which were presented at the meeting of July 12 by the honorable British delegate concerning the impossibility of recognizing as lawful the conversion of merchant ships into war-ships in neutral ports and *on the high seas* does not seem to be consistent with the definition of the term "war-ship" formulated by the British delegation.¹

The aforesaid delegation includes under the term "war-ship" any, even a neutral, merchant ship which is used for the transportation of fuel, provisions, water, etc., for the belligerent fleet.

But then we must ask ourselves when the conversion of the merchant ship into a war-ship (auxiliary vessel) took place. The change in the said goods could have taken place only in belligerent or neutral ports, or perhaps on the high seas. It is evident, in his opinion, that this conversion must have occurred, according to the English definition even in neutral ports or at times on the high seas.

That is why it seems to him that the definition of the term "war-ship" formulated by the British delegation is not really in opposition to the conversion of merchant ships into war-ships on the high seas.

I call attention to this fact in further support of the Russian proposal in the matter of the place of conversion.²

¹ Annex 2.

² Annex 3.

His Excellency Count **Tornielli** has followed most attentively and with the keenest interest the explanations which his Excellency Lord **REAY** has made on the scope of paragraph B of the British proposal. He does not, however, feel that he can recall their full import. To do so he must wait until he has before him the minutes of the meeting. He has, however, caught a few expressions here and there. The honorable British delegate spoke of vessels accompanying or escorting the belligerent fleet, ships sailing in company with the fleet or awaiting order at sea or in port. These expressions have a special meaning of the utmost importance in the language of international law, and if they were inserted in [850] the British proposal might have the effect of sensibly modifying its general meaning. We should therefore appoint a special committee, before the discussion is resumed, which shall endeavor to revamp paragraph B of the British proposal, which, in view of the explanations at the present meeting, will perhaps require revision.

The **President** thinks that the time has come to appoint a committee of examination whose duty it shall be to draw up a text which shall take into account the various proposals that have been submitted. He proposes to designate the following gentlemen as members of this committee:

MESSRS. **KRIEGE**, **LOUIS RENAULT**, their Excellencies **Mr. CARLOS RODRÍGUEZ LARRETA**, **Baron CHARLES VON MACCHIO**, **Mr. VAN DEN HEUVEL**, Rear Admiral **CHARLES S. SPERRY**, his Excellency **Sir ERNEST SATOW**, **Jonkheer VAN KARNEBEEK**, his Excellency **Mr. KEIROKU TSUDZUKI**, and his Excellency **Mr. HAMMARSKJÖLD**.

His Excellency Count **Tornielli** accepts the committee of examination as selected by the President, but he thinks that it would be better to entrust a special committee composed of delegates of the Powers whose proposals appear in the synoptic table with the task of finding a more exact interpretation and wording for paragraph B of the proposal of Great Britain.

Consequently there would be on this committee, together with the Bureau of the Commission, a delegate of Austria-Hungary, of Great Britain, of Italy, of Japan, of the Netherlands, and of Russia.

At the request of the **President** his Excellency Count **TORNIELLI**'s proposal is adopted.

His Excellency **Sir ERNEST SATOW** accepts appointment as a member of the committee of examination, but in case he should be unable to attend he asks that he be replaced by his Excellency Lord **REAY**.

At the request of his Excellency **Mr. HAGERUP**, the **President** states that the members of the Bureau of the Commission are of right members of the committee of examination.

After announcing that question III of the *questionnaire*¹ will be discussed at the next meeting, the **PRESIDENT** closes the meeting at 4 o'clock.

¹ Annex 1.

[851]

EIGHTH MEETING

JULY 24, 1907

His Excellency Mr. **Martens** presiding.

The meeting opens at 10:50 o'clock.

The minutes of the sixth and seventh meetings [are adopted].

The **President** announces that the Austro-Hungarian delegation has filed an amendment¹ to the proposed *væu* concerning private property at sea submitted by the delegation of France.² This amendment will be printed and distributed.

Its discussion is postponed to the meeting at which the *væu* presented by the French delegation is to be discussed.

The **President** states that the small committee appointed by the Commission to study the British proposal³ concerning the classification of vessels as fighting ships and auxiliary ships, as well as the definition of these various vessels, has charged Mr. FROMAGEOT to make a report on its deliberations. He recalls that this report is not to be made the subject of discussion. It has been drawn up for the purpose of throwing light upon the question propounded by the British delegation.

Upon the invitation of the **PRESIDENT**, Mr. **Fromageot** (reporter) reads this statement, which appears as annex A to these minutes.

His Excellency Lord **Reay** thanks Mr. FROMAGEOT in the name of the committee for his report, which he characterizes as accurate and illuminating.

His Excellency Mr. **van den Heuvel** asks for an explanation on a particular point in the English proposal. He would like to know whether this proposal is to be considered as independent of the question of contraband of war or as forming with it an indivisible whole; in other words, whether the English proposal can exist alongside of and be grouped with the proposals which maintain contraband of war, or whether it constitutes the counterpart of the suppression of contraband.

In reply to this question, his Excellency Lord **Reay** states that the British proposal covers a special class of vessels which give direct aid to belligerents and is not the counterpart of the suppression of contraband of war.

[852] After stating that the Commission makes official record of the reply of

his Excellency Lord **REAY**, the **President** announces that the program calls for discussion of the question of days of grace. The Commission is to declare itself on the question whether days of grace are of an obligatory character

¹ Annex 17.

² Annex 16.

³ Annex 2.

or whether they are merely a privilege which the belligerent is free to grant or to refuse.

Mr. Louis Renault finds it somewhat difficult, in view of the form in which the question is put, to explain to the Commission the attitude of his Government on the subject. The Commission finds itself confronted by two courses of action: either to maintain the present system, which is a favor; or to give it an obligatory character, with various reservations. He proposes to the Commission an intermediate system. He believes that it would be very difficult to regulate the period itself and to fix it by convention. It would hardly be possible to oblige belligerents always to allow enemy merchant ships of whatever character to leave their ports. There may be in these ports merchant ships which are capable of being converted into war-ships and which receive subsidies on that account. By detaining such vessels in his ports, the belligerent deprives his adversary of means of attack or defense. For many years English jurists have been preoccupied with this question; one of them recently declared that the Government which should allow such a vessel to escape on the outbreak of hostilities would be committing an act of criminal folly. At the same time he called upon British ship-owners not to lose sight of the course of events and to be careful not to leave in possible enemy ports any of their vessels that could be used in military operations. It would seem therefore to be difficult to make a positive agreement in the matter of days of grace. That is why Mr. LOUIS RENAULT thinks an improvement can be made in the system which has been in vogue for half a century, and that imperative military requirements can be reconciled with respect for private property. A belligerent who has enemy merchant ships in his ports should not be permitted to take possession of them or to confiscate them as enemy prizes, but he has the right to detain them. It is probable that in the majority of cases it will not be to his interest to take such action, but he will have freedom of choice in this respect.

On the other hand, it may be to the interest of the belligerent to utilize those vessels which are adaptable to the needs of war. The French delegation admits that in such cases he may requisition them, but he must pay them an indemnity. This proposal,¹ which reads as follows, aims to bring about an improvement in the old practice:

Merchant ships belonging to belligerent Powers which on the outbreak of hostilities happen to be in enemy ports, and to which no days of grace shall be granted to put to sea may not be confiscated.

Nevertheless they may be refused permission to leave the port, and they are then subject to requisition, in consideration of an indemnity, in conformity with the territorial laws in force.

Mr. Beaufort remarks that it appears from the debates which took place in the Commission last week that days of grace for the merchant ships of a belligerent which happen to be in a port of another belligerent when war breaks out are recognized unanimously as a just and equitable measure, and that they have been generally allowed by all belligerents in recent wars, and that it is desirable that they be allowed in future.

Under these circumstances the delegation of the Netherlands believes that

¹ Annex 20.

the time has come to introduce this principle into the rules of conventional law.

[853] Therefore when the question: Should days of grace be obligatory? is put, the delegation of the Netherlands intends to reply in the affirmative.

However, he admits that the principle cannot be accepted without any restriction. In the first place, it will be necessary to except the vessels which Mr. LAMMASCH has so wittily denominated hermaphrodites—vessels that can be converted into war-ships. Then, since according to what we have been told the time necessary for loading and unloading vessels in port varies considerably, it will be difficult to fix the length of the period of grace. It will suffice therefore to fix a minimum which must always be granted. It is to be hoped that belligerent Governments will extend this period as regards all its ports, or as regards certain of them, if circumstances so require.

If on the basis of these restrictions an agreement could be concluded between the partisans of the obligatory system and those of the optional system, the delegation of the Netherlands would be disposed to present an amendment ¹ to the Russian proposal ² in the aforesaid sense.

The President recalls that the Commission was to vote on the obligatory or optional character of days of grace, but the French proposal being an amendment, the procedure requires that it be voted on first, and that the principal question then be voted on without mention of the details which will be examined by the committee of examination.

His Excellency Lord REAY states that the British delegation has received no instructions regarding the French amendment. It will therefore reserve its vote, but it proposes that the Commission declare itself following the formula proposed by his Excellency Count TORNIELLI.

Mr. Georgios STREIT likewise states that he reserves his vote on the French proposal; but it contains two points which might be voted on separately: the first concerning the right of detention but not of confiscation, and the second establishing the right of requisitioning with the payment of an indemnity.

Mr. Louis RENAUULT replies that his proposal is made with the idea that belligerents are free to allow enemy merchant ships to leave or to detain them in their ports. He thinks that it would be difficult to establish by convention the distinction proposed by the Netherland delegation and considers that belligerents must have absolute power to decide for themselves in this matter. The most important point in the French proposal is the option to detain but not to confiscate, and consequently the elimination of any pecuniary benefit. Mr. STREIT is therefore within his rights in asking for a division of the vote.

Mr. KRIEGE states that the German delegation believes that it would be desirable to make days of grace obligatory. It reserves the right to examine the scope of the distinctions made by the Netherland proposal and to what extent they mitigate the present situation. So far as the French proposal is concerned,³ which necessitates an exhaustive study, the German delegation must for the time being likewise reserve its vote.

His Excellency Mr. Keiroke Tsudzuki, who also desires to study the French proposal, reserves his vote.

¹ Annex 19.

² Annex 18.

³ Annex 20.

His Excellency Mr. Ruy Barbosa asks to be allowed to explain his vote. The French proposal ¹ marks considerable progress, but it applies to all merchant ships without distinction, while the Netherland proposal ² applies only to [854] vessels that can be converted into war-ships. He believes that under these circumstances the Netherland proposal is a restriction of the French proposal. In other words, the first delegate of Brazil asks whether it is possible to vote first for the French text and then for the Netherland proposal.

The President is of the opinion that, in view of the declarations which have been made, it would be difficult to proceed to a vote immediately. He therefore proposes to postpone the vote to next Wednesday's meeting. The proposal read by Mr. LOUIS RENAULT will be printed and distributed, and it is to be hoped that all the members of the Commission will be in possession of instructions on this subject.

The PRESIDENT proposes that the Commission pass to a discussion of question VI and those following.³ Question VI is thus worded: What is the foundation of the right of belligerent Powers to prohibit commerce in articles constituting contraband?

The synoptic table ⁴ which has been drawn up sets forth the different proposals that have been submitted to the Commission. Before the discussion of matters of detail is taken up, which is besides within the jurisdiction of the committee of examination, he proposes that the Commission declare itself upon the principal point, namely, whether the system of contraband of war is to be maintained.

His Excellency Lord Reay takes the floor and says:

The custom established by international law as to contraband of war is based upon the principle that a belligerent has the right to prevent his adversary from receiving from a neutral those things which are indispensable for the waging of war. In the beginning, when the regulations in this regard took more or less definite shape, it was possible for a belligerent to deprive the enemy of such aid without doing unreasonable harm to neutral commerce. But the conditions of the world have changed since that time, and belligerents have thus been led little by little, in order to attain their ends, to pervert the meaning of the regulations and to extend their scope to the detriment of the interests of neutrals. However, in spite of such action, the regulations are powerless to accomplish their purpose and succeed only in doing great harm to neutral commerce. Thus it is indisputable that in recent wars it has never been possible for a belligerent to deprive his adversary of the munitions which the latter needs.

That being so, it is clear that the only way to prevent commerce in contraband is to adopt such severe measures that the Declaration of Paris, which was made in the interest of neutrals, would not be merely an empty word.

It is not difficult to understand why we could be content in the beginning with uncomplicated regulations. It suffices to recall the conditions of world commerce at that time. Vessels were then of small tonnage: the entire cargo was consigned to the same place and was unloaded at the same port. Thus, vessels did not touch at several ports in the course of a voyage to unload a portion of

¹ Annex 20.

² Annex 19.

³ Annex 1.

⁴ Annex 32.

their cargo, and their cargo was not destined to be reshipped to the interior, after being unloaded at the port of the consignee. Furthermore the articles which an army or a fleet needed were not numerous. It follows that it was rather easy to exercise the right of search, since on the one hand the destination of the vessel sufficed to indicate the presence of articles of conditional contraband, and on the other hand a vessel never carried articles of absolute contraband unless destined for a belligerent.

[855] Present conditions are entirely different. The enormous extension of transportation by land, thanks to the railroads, the progress of the sciences which by multiplying the instruments of land and naval warfare have increased in the same measure the number of articles that are indispensable for the operations of a fleet or an army, the great increase in the size of modern merchant ships, are so many reasons why the old regulations do not in any degree accomplish the object intended, which is to prevent neutrals from carrying on trade in contraband. That is how the belligerent has been led to attempt to adapt the rules of long ago to modern conditions and has in reality succeeded only in creating a state of affairs which hampers neutral commerce out of all proportion without giving the belligerent any advantage commensurate with the harm done.

Nowadays the railroads permit any Power to import by land such articles of contraband as it may need. Insular Powers have not quite the same advantages in this respect. Nevertheless the railroads play a similar part in their affairs also, since it is possible to unload in a purely commercial port the supplies needed by an arsenal hundreds of miles away.

Consequently the pure and simple destination of a cargo has long ceased to be an absolute proof of the character of articles of conditional contraband. Therefore the doctrine of the "eventual use" for which the cargo is destined has been substituted. But to show that a cargo consigned to a certain port is destined for an ulterior use evidence is necessary of a kind that is very difficult to secure, especially for the captor of the vessel. We have therefore been led to lay down the rule that the burden of proof as to the innocent destination of the cargo rests upon the owner of the vessel, and when he is unable to prove this innocent use, the prize court decides against him. As it becomes more and more difficult, thanks to the increasing complications of modern commerce, for the shipper or consignee of a cargo to know exactly, and especially to prove, the original intention which actuated the shipment, it is clear that the modern regulations do not tend to facilitate neutral commerce.

Again, it is to the means of transportation that we owe the modern development of the doctrine of continuous voyage or transportation. The belligerent has very naturally refused to permit a neutral to escape the penalties proclaimed for contraband by making use of the simple expedient of consigning to a neutral port a cargo destined to be conveyed eventually, by land or sea, into the territory of the enemy. The Institute of International Law has admitted that this attitude on the part of the belligerent was just and reasonable. Nevertheless we must point out that we are again confronted with a principle which results in undue restriction of the freedom of action of the neutral, in the hope of putting an end to prohibited trade.

The existence of the doctrine of continuous voyage, gentlemen, depends solely upon the status of contraband. Thus, by abolishing one you necessarily abolish the other, but if you do not touch the principle of contraband, you must

likewise leave in existence the theory which is its logical corollary and upon which we cannot therefore impose limitations.

In the first place, we merely insisted on knowing whether the cargo was to make a further sea voyage: witness the case of the *Springbok*. Then the theory was applied to transportation on land: witness the decision in the case of the *Doelwijk*. The Italian court declared that "it is to the destination of the cargo rather than of the vessel that we must turn our attention to determine whether or not the articles transported are to be considered contraband of war,

and just as arms destined for one of the belligerents would not cease to be [856] directed to the enemy merely because, on account of special circumstances, they had to be transhipped on the way to another neutral vessel, so they would not cease to be directed to the enemy merely because part of the journey to the belligerent cannot be made by sea but must be made on land in land vehicles."

The logic of this preamble seems to be indisputable. If the carrying of contraband is an offense which a belligerent can punish, there is no way of denying him the right to seize and to confiscate articles of contraband, when the material fact and the intention have been ascertained. But admitting the justice of the conception not only of absolute contraband but also of continuous voyage, we are necessarily forced to recognize a state of affairs which can lead to constant disruption of commercial relations between neutral nations situated in the neighborhood of the territory of one of the belligerents, since articles included in the two aforesaid categories may always be destined to the use of the belligerent, and a prize court can always base its judgments on the decisions which I have cited.

As has been said above, gentlemen, the discoveries of modern science have greatly increased the number of articles which are indispensable to the movements and operations of naval and military forces. These articles, such as railroad ties or telegraph wire, can for the most part be used for peaceful as well as for military purposes, and that is why belligerents have been led to add to the list of articles of contraband a great number of articles which are equally necessary in peaceful industries, and thus to prevent the neutral from engaging in a perfectly innocent commerce.

There is still another phase of the question of contraband, to which I desire to call your attention. The established custom permits a belligerent to declare at the beginning of a war what article he intends to treat as contraband and to add others to the list during the course of hostilities.

It is evidently to the interest of the belligerent to make as long a list as possible, and he has often done so in terms so vague that the interests of the neutral merchant have been injured to an unreasonable extent. It is true that the belligerent may be called upon to explain the exact meaning of a term used in this list, but it is proper to remark that unless there be a formal amendment, a prize court is not bound to accept the explanation and to give the text of the proclamation an interpretation in conformity therewith.

I foresee that we shall be told that no difficulty will be experienced except as regards articles that can be used for both military and peaceful purposes, and that the true solution of the problem consists in abolishing conditional contraband, as has already been proposed by the Institute of International Law. This would leave only absolute contraband and the right of the belligerent to seize, on

condition of reimbursement, articles which might be harmful to him. Such a solution would evidently constitute sensible progress in the direction desired, but my Government cannot admit that it would put an end to the difficulties which we now experience, and that for the reasons which I shall have the honor of laying before you.

Indeed, when we approach the question of absolute contraband, we see that because of its enormous size, arms and munitions on board a modern merchant ship generally form only a portion of the cargo. Moreover, articles of contraband may have been loaded on board with a false designation and consequently may not appear on the vessel's bill of lading. The captain himself may be ignorant of their presence on board. Under such conditions and in view of the size of [857] the vessel, it is impossible for the officers of a belligerent war-ship to exercise the right of search at sea carefully and effectively.

The belligerent is thus often led to seize a merchant ship carrying a mixed cargo on information which he has received from his secret agents in the port of departure, and even though this information be correct—and I need not tell you that it very often is not—the quantity of contraband is often insignificant in proportion to the rest of the cargo. The seizure and detention of a vessel, as well as of innocent cargo, inflict injuries upon the neutral out of all comparison with the advantage accruing to the belligerent and give rise to demands for tremendous indemnities.

To these demands the captor has only one answer, which is that in all cases where a prize court has declared that the seizure was justified, the owners of the vessel and of the innocent cargo must bear the loss occasioned by this act. The captor State is therefore quite naturally led to try to obtain by every possible means a decision to this effect by the prize court, which will enable him to meet the demands for an indemnity presented by the Government of the neutral with a refusal.

There can be no doubt that a belligerent who should strictly apply the regulations and who, relying on the rights which he possesses, should seize every ship carrying a mixed cargo, into which may have slipped a few articles of contraband, would do such damage to neutral commerce that one of the injured States might be induced to take up arms in defense of the commercial interests of its subjects. But no State could run such a risk with respect to a powerful State. Hence one of two things will happen: either the belligerent will cease to suppress commerce in contraband vigorously and will take only intermittent action against it, or his attitude will be more or less severe according to the Power with which he has to deal. If he adopts the former expedient, he will only succeed in throwing things into confusion; if, on the other hand, he follows the other course, he will be acting with manifest injustice.

It must not be forgotten that when public opinion has been aroused by the captures made by a belligerent, either by reason of the number of vessels captured or of their importance—as would happen if mail steamers or great trans-Atlantic liners were involved—the press would not fail to fan the fire and to stir up popular feeling. In the face of public over-excitement and of popular clamor, it would be difficult, indeed impossible, for the two States to discuss with the necessary calmness the complicated questions of international law which had been called forth by the exercise of the right of capture on the part of the belligerent States.

A way out of the difficulties which I have mentioned would, in the opinion of some people, be to permit a neutral merchant ship to give up at once to the belligerent war-ship that portion of its cargo which was suspected and, that done, to continue its voyage. From the point of view of the neutral vessel this system might perhaps have its advantages, but it is unlikely that belligerents could conform thereto, even if they so desired. In any event, the owners of the seized goods would suffer if such a system were adopted, since the prize court would have to decide later on as to the validity of the capture and since, without having knowledge of the ship's manifest and without having heard the depositions of its officers, the court could not render a decision of any value.

A still more remarkable proposal has been recently put forward. Certain belligerents have claimed the right to destroy forthwith on the neutral vessel all articles which the officers of the capturing ship consider contraband. There [858] is no need to dwell upon the injustice of such a proceeding which is, moreover, without precedent. It suffices to remark, in passing, that all the objections enumerated in the foregoing paragraph can with even greater reason be urged against the adoption of this principle, which besides would prevent the belligerent from restoring the articles seized to their owner, in case the prize court should declare that they were not contraband.

I have already alluded to the uncertainty which exists as to the rules that may be applied for the suppression of contraband. I am permitting myself to return to this subject and to explain my ideas thereon. The practice of nations has indeed assumed different forms, to which I think it would be well to call attention. Thus, we make use of the expressions "absolute contraband," "relative or conventional contraband," "conditional contraband," "accidental contraband," and everyone takes from these definitions whatever he needs for his purpose. There is here a state of uncertainty upon which it would be well to throw light. The same may be said of the penalties incurred in the matter of contraband. Should articles seized be confiscated or should the right of sequestration and pre-emption be substituted for confiscation? In what cases can we allow not only confiscation of articles of contraband but also of the rest of the cargo and of the vessel? Must we limit the exercise of the right of search to a certain distance from the theater of war?

Shall a prize court or council have complete freedom of action in deciding whether captured articles are articles of contraband, or must it always conform to the stipulations proclaimed by its Government upon this point?

To put an end to these uncertainties, gentlemen, it would be necessary to codify the law of contraband and to include in this code not only a list of prohibited articles, but also the penalties incurred by neutrals who engage in such commerce. This is, in my opinion, a herculean task that no jurist would dare to undertake, and the only way, to our mind, of solving the problem is to abolish the system of contraband. Our Government feels that the benefits to be derived from universal regulations would be much less than the harm that such regulations would do to neutral commerce. For the maintenance of the principle of contraband necessarily implies the maintenance of the "right of search," of the right of seizure, and examination by a prize court, and however limited the list of articles of contraband may be, such a state of affairs would not fail to injure neutral commerce.

It is not in an assembly like ours that we can discuss events which have

taken place in the course of recent wars. However, in order to prove that my Government did not propose this change in the principles of international law until it had maturely reflected on the problem—it is well to remind the Commission that Great Britain has had opportunity to consider the question from two points of view—that of a belligerent and that of a neutral—since the meeting of the last Conference in 1899. As a belligerent she endeavored to suppress contraband trade between neutrals and her enemy; as a neutral she was a witness of the disruption of her commerce in the Far East, as the result of the efforts of the belligerents to suppress trade in contraband, in which neutrals were unquestionably engaged. It is no exaggeration of the importance of the incidents which took place at that time to say that it was only because of the qualities of tact and patience displayed by the Governments concerned that these incidents were not more serious.

Recent experience, gentlemen, has therefore confirmed my Government in its opinion. It remains firmly convinced that in the present condition of world commerce and of human knowledge the exercise of the right of seizure results only in hampering neutral commerce without giving belligerents compensat-[859] ing advantages and in bringing the former eventually into the war. It is therefore with the firm conviction that the time has come to remove the dangers which I have pointed out that the British delegation has the honor to propose¹ that contraband be abolished and that neutral commerce be restored to the freedom which it requires. If the Conference accepts our proposal, it will have removed a frequent cause of international differences and will have thus contributed to the cause of peace and justice, which is the object of our proceedings.

Mr. Kriege asks permission to explain to the Commission in a few words the proposals,² which have been filed by the German delegation on the subject of contraband of war.

The six articles which you have before you, says he, contain the reply which, in our opinion, should be given to questions VI and VII of the *questionnaire*³ so ably prepared by our illustrious President.

The right of belligerent Powers to prohibit commerce in articles of contraband of war is founded on the principle of legitimate self-defense. It has absolutely nothing to do with the right of capture, which is the instrumentality of war on commerce. The belligerent cannot indeed allow arms, implements of war, articles of all kinds destined to be used in war to be conveyed to the enemy. A neutral vessel which engages in such commerce is committing a violation of the duties of neutrality. But according to a generally recognized principle, the State whose flag this vessel flies is not responsible for this violation. Neutral States are not bound to forbid their subjects to engage in a commerce which from the standpoint of the belligerent is considered illicit. The necessary counterpart of this principle is the right of the belligerent to take the law into his own hands. He confiscates goods which are of a contraband character and in certain cases the vessel itself which carried these goods.

In our conviction, belligerents cannot give up the principle of contraband. It would be still more indispensable if the inviolability of enemy private property

¹ Annex 27

² Annex 28.

³ Annex 1.

at sea were to be recognized. It would then necessarily have to be applied to transportation effected by the merchant ships of belligerents. The proposal of the United States is therefore right in making an express reservation on this subject.

In these circumstances our efforts should be directed toward reconciling as far as possible the claims of belligerents with the interests of commerce. It is a question of defining the conception of contraband, of eliminating the abuses caused by an unwarranted extension of the right of control and suppression, and of protecting innocent commerce from unnecessary molestation. If we consider the more or less bitter disputes between belligerents and neutrals which questions of contraband of war give rise to in the course of every war, it is evident that by accomplishing the object indicated, the Conference would render a signal service to the cause of peace. In the rules which we propose we have endeavored to find a middle term between opposing interests.

In the first place, it is necessary to limit the area of the right of control and suppression exercised by belligerents. It would seem to be inadmissible for a belligerent, basing his action on this right, to throw the commerce of the whole world into confusion. His interests command him to suppress the carrying of articles of contraband to his adversary. This interest is safeguarded, if it is recognized that he has the privilege of searching vessels which are bound directly for an enemy port or a port occupied by the enemy, or for an enemy fleet at anchor on the high seas. The moment the belligerent is authorized to seize contraband of war on board a vessel which is far distant from the enemy country and which is not to go there until it has touched at an intermediate [860] neutral port, the door is opened to all kinds of abuses and we run the risk of exposing lawful and innocent commerce to grave dangers. We must therefore not only proscribe the theory of continuous voyage but establish the principle that commerce between two neutral ports may not be molested under the pretext that the vessel is carrying articles of a military character destined to be eventually conveyed to the enemy.

It is in this sense that we propose that only articles forming the cargo of a vessel bound directly for an enemy port or a port occupied by the enemy, or for an armed force of the enemy be considered contraband of war.

As for articles to be considered contraband of war, we deem it essential to continue the distinction between the two kinds of contraband, namely, absolute contraband and relative contraband. In absolute contraband only arms and articles of use exclusively in war will be included.

Articles susceptible of peaceful as well as military use can only be declared relative contraband. That is to say, such articles will not be liable to seizure unless it is proved that they are destined for military or naval forces of the enemy.

We do not mean to say that we do not see the advantage there would be in limiting the number of articles that may be carried on the list of relative contraband. We have been obliged, however, to give up such an idea, in view of the fact that there are very few articles which by their nature and their usefulness to the enemy may not, if the case should arise, make it desirable to prohibit their transportation.

Nevertheless belligerents would be bound to publish and notify to neutral

Governments in detail the articles which they deem it necessary to consider contraband of war.

Articles 4 and 5 deal with the penalty for the carrying of contraband of war. Contraband shall always be confiscated. Confiscation shall include the carrying vessel only in case its owner or its captain has knowledge of the presence of contraband on board, and if the contraband forms more than half of the cargo. This confiscation is based upon the theory that the penalty must be in proportion to the gravity of the hostile act committed by the owner or by his agents. It would likewise be unjust to release the vessel, if the captain was ignorant of the outbreak of hostilities and if he is still ignorant thereof through no fault of his own, which is to be presumed in case the vessel is encountered at sea during the week following the outbreak of hostilities and has not within that time put into any port. In the same circumstances, an indemnity would be granted the owner of the goods confiscated as contraband of war.

The last article refers to acts which, in our opinion, should be placed in the same category as the carrying of contraband. It deals with service rendered a belligerent by the transportation of bodies of troops or of individual passengers who belong to its armed forces. It is our opinion that in the first case the vessel should be confiscated; but not if only a few individual military passengers are found on board. It would hardly be just to require that the captains of great modern liners, which carry thousands of passengers should look into the character of each one of them and, in case of error, to inflict so heavy a penalty. We therefore propose that a vessel be not confiscated unless the transportation of military passengers constitutes the real object of the voyage. It is of course understood that soldiers found on board shall be made prisoners of war.

There is still another question connected with that of contraband and with regard to which the German delegation has filed a special proposal. It [861] refers to the protection of postal correspondence in time of naval warfare. We believe that it would be of advantage to establish the principle that postal correspondence forwarded by sea is inviolable.

Postal relations have in our time such importance, there are so many commercial and other interests dependent on the regularity of the mails, that it is highly desirable to protect them from the disturbance which might be caused by naval warfare. On the other hand, it is hardly likely that belligerents, who have at their disposal for the transmission of their dispatches the channels of telegraphy and radiotelegraphy, would resort to the ordinary mails for official communications relating to military operations. The advantages to be derived by belligerents from control of the postal service is not to be compared with the harm done legitimate commerce by the exercise of this control.

The most effective means of attaining this object would be to free from all control vessels engaged in regular mail service. However, there does not seem to be much likelihood that such action will be taken. We must confine ourselves to proclaiming that belligerents must take into consideration the special character of such vessels and abstain, so far as possible, from exercising the right of search aboard them. But inviolability of the correspondence itself should be absolute, whatever may be the nationality of the vessel carrying it. Belligerents would have no right, in case of the seizure of a mail steamer, to break the seals of bags containing letters for the purpose of examining them, and they would be bound to take necessary measures to ensure their prompt delivery at their destination.

Mr. Louis Renault thinks that the statement made by his Excellency Lord

REAY should be carefully studied by the members of the Commission. He therefore proposes that the examination of it be postponed to the next meeting.

The President seconds this proposal. He states that the continuation of the general discussion of question VI and those following the *questionnaire*¹ is postponed to Friday, July 26.

His Excellency Mr. Porter files, in the name of the delegation of the United States of America, the following amendment² to the project of the Italian delegation³ concerning blockade:

ARTICLE 3

Omit the words: "by longitude and latitude."

ARTICLE 5

Omit the article and substitute:

Any vessel, which after a blockade has been duly notified sails for a port or place that is blockaded, or attempts to force the blockade, may be seized for violation of the blockade.

The meeting adjourns at 12:10 o'clock.

[862]

Annex

DEFINITION OF THE TERM "AUXILIARY VESSEL"

REPORT TO THE COMMISSION⁴

On June 28 last, the British delegation presented to the Commission a proposition relating to the definition of the term "war-ship," which was reported in annex 2 of the proceedings of the Fourth Commission.

This proposition is thus worded:

There are two classes of war-ships:

- A. Fighting ships;
- B. Auxiliary vessels.

A. The term "fighting ship" shall include all vessels flying a recognized flag, which are armed at the expense of the State for the purpose of attacking the enemy, and the officers and crew of which are duly authorized for this purpose by the Government to which they belong. It shall not be lawful for

¹ Annex 1.

² Annex 35.

³ Annex 34.

⁴ This report is presented in the name of a committee of examination, which was composed of his Excellency Count TORNIELLI, president, his Excellency Mr. MARTENS, president of the Fourth Commission, his Excellency Lord REAY (Great Britain), Rear Admiral SIEGEL (Germany), Rear Admiral SPERRY (United States), Rear Admiral HAYAO SHIMAMURA (Japan), Captain BEHR (Russia), Lieutenant SURIE (Netherlands), Mr. FROMAGEOT, secretary of the Fourth Commission, reporter.

a vessel to assume this character except before its departure from a national port, nor to relinquish it except after its return to a national port.

B. The term "auxiliary vessel" shall include all merchant ships, whether belligerent or neutral, which are used for the transportation of sailors, munitions of war, fuel, provisions, water, or any other kind of naval supplies, or which are designed for making repairs, or charged with the carrying of dispatches or the transmission of information, if the said vessels are obliged to carry out the sailing orders given them, either directly or indirectly, by a belligerent fleet. The definition shall likewise include all vessels used for the transportation of military troops.

At the session of July 19 last, there was a certain amount of confusion as to the scope and exact meaning of this proposition.

Did the proposition really concern the conversion of merchant ships into war-ships? Would it not be better to consider it in connection with contraband? Was it a new question, separate and distinct, concerning the recognition of a certain legal status with respect to private vessels, enemy or neutral, put into service by military forces?

[863] Such were the circumstances under which, upon the initiative of his Excellency Count TORNIELLI, you constituted a small committee composed, with your bureau, of the delegates of the Powers that had presented propositions respecting the conversion of merchant ships into war-ships. You requested this committee to define the meaning and the scope of the said paragraph B of the British proposition.

The committee met yesterday morning, July 23, and has been pleased to charge your secretary to lay briefly before you the result of its deliberations.

The British proposition, as presented, includes in its preamble, as you have seen, in the single expression "war-ships," two classes, fighting ships and auxiliary vessels.

His Excellency Lord REAY declared at the very start that he withdrew this preamble.

As a result, there is no longer occasion to present, as a class of war-ships, the vessels referred to by the British proposition under the name of auxiliary vessels.

The proposition is therefore found to include at present two clearly distinct provisions:

1. A provision relative to the definition of "fighting ships," that is to say, the conditions that a war-ship must fulfill in order to enjoy this characterization from the standpoint of international law.

In this respect and in reply to a remark made by Count TORNIELLI, the honorable British delegate very plainly declared that nothing was further from the mind of his Government than to propose a text which might bring up the thought of a disguised reestablishment of the old right of privateering.

Furthermore, this first paragraph did not have to be examined by the committee. It seemed naturally to require discussion in connection with the propositions presented on the same subject by the other delegations.

2. A provision containing a definition of what the British delegation proposes to call "auxiliary vessels."

On this point his Excellency Lord REAY explained the point of view of his delegation, which is to assimilate to the military vessels of a naval force, with respect to the treatment to which they are exposed, merchant ships, whether employed in the service of this fleet for any purpose or placed under its orders,

or serving to transport troops in any way, thus plainly rendering hostile assistance to the fleet.

In order to define the scope of the proposition the members of the committee explained in turn the consequences which it seemed to carry in its train.

Hostile character recognized with respect to vessels carrying munitions, fuel, provisions, etc., it was remarked, is nothing else than the sanction of the idea of contraband in apparent contradiction to the proposal, made by Great Britain, to abolish this idea. Contraband destined for a naval force would thus be left seizable—and, as we are about to see, under more rigorous conditions than before—while the same kind of transportation to an enemy port would be lawful.

On the other hand, in the present state of law, a merchant ship accompanying a fleet is simply exposed to the common law treatment, that is to say, capture and the requirement of a confirming decision by a prize court.

[864] Subjection of the said vessel to the same treatment as the military vessels of this fleet would authorize not only capture without any judicial prize decision, but also the employment of all means of destruction in use between military forces.

From this exchange of observations and the explanations given by his Excellency Lord REAY, it follows that the meaning and scope of the British proposition may be stated as follows:

Properly speaking, this is not a question of contraband nor of merchant ships converted into war-ships, that is to say, mobilized. It is not commerce with a belligerent that is referred to, but the fact of a vessel's being in the service of this belligerent in any capacity whatever, as a magazine ship, repair ship, provision, fuel, or munition ship. Perhaps the ship may be in ballast, accompanying the fleet for such and such a contingency.

These vessels, in the course of their service in behalf of the belligerent, would, according to the British proposition, be subjected to the same treatment as the military vessels of this belligerent, with all the consequences of fact and of law which result therefrom.

As soon as their service has terminated, they would again be under the jurisdiction of common law.

The expression "auxiliary vessel," often used to designate mobilizable or mobilized vessels, which are destined to exercise the rights of belligerents, may here cause confusion. Such confusion, as may be seen, must be avoided.

Is it proper, as our president, Mr. MARTENS, has pointed out, to recognize this new class of vessels, standing, in a way, between belligerent military ships and private vessels?

Is there occasion to impose the proposed treatment upon them?

Should a distinction be made between a vessel sailing in company with a fleet, a vessel sailing alone under the orders of the said fleet, and a vessel transporting troops?

The committee of examination was not asked to pass upon this question. It has endeavored, as it was charged, to define the question, which is for you to decide.

NINTH MEETING

JULY 26, 1907

His Excellency Mr. Martens presiding.

On the President's inquiry whether the Commission has any remarks to make on the minutes of the last meeting, his Excellency Lord Reay asks that certain corrections be made therein. The minutes will, therefore, not be adopted until the next meeting.

The President recalls that the program includes the discussion of the question of contraband of war. It will not be necessary for the Commission to enter into the details of the various proposals. It will discuss the two points of view set forth and the committee of examination will take into account all the opinions which have been expressed in drawing up a text that will endeavor to reconcile these divergent views and that will be laid before the Commission for ratification.

On question VI of the *questionnaire*,¹ which reads: What is the foundation of the right of belligerent Powers to prohibit commerce in articles constituting contraband of war? his Excellency Mr. Carlos Rodriguez Larreta considers it necessary to say a few words on the attitude of the Argentine delegation as regards the question now under discussion.

It will vote in favor of the proposal which makes it optional to grant days of grace to merchant ships that happen to be in an enemy port on the outbreak of hostilities. There is absolute consistency between this vote and the Argentine delegation's vote on the right of capture and confiscation of merchant ships under an enemy flag. It is likewise in keeping with a principle which that delegation will endeavor to apply to all questions which arise in naval warfare.

The Argentine delegation has declared itself in favor of arbitration and of international justice; but "war is war" without other limitations than those that must be placed upon cruelty and barbarity; for if it is not given the Conference to ensure peace, the Argentine delegation cannot for that reason deprive war of its necessary energies.

Nevertheless his Excellency Mr. LARRETA expresses his unreserved adhesion to the British proposal² with regard to the definition of the term auxiliary vessel and with regard to the abolition of contraband of war.

[866] We are not ignorant of the fact, says his Excellency Mr. LARRETA, that the application of this system, a brand new one in the practice and science of international law, would tend to prolong wars in future until one of the belligerents had exhausted his financial resources. But, on the other hand, it would prevent disputes that could not be settled by process of law, and which in the matter of contraband of war produce divergences among publicists, in international treaties, and in the domestic legislation of the various countries.

¹ Annex 1.

² Annex 27.

Moreover, the benefit to neutral commerce, that is to say, to commerce in general, which would result from its adoption, would be tremendous, and it is our conviction that the evils of war should fall exclusively, if it were possible, upon the belligerent countries alone.

Mr. Louis Renault states that the British proposal, which aims to eliminate contraband of war, has attracted considerable attention not only in the Conference itself, but also on the outside. This proposal has the merit of having outstripped theory. Although much has been written on contraband of war, although many systems have been set up, no writers have thus far advanced so radical a proposal on this subject as that of the British delegation.

It is not, however, without precedents. Mr. ERNEST NYS informs us that a German jurist of the eighteenth century proposed that the abolition of the conception of contraband of war, and consequently free trade between neutrals, be adopted.

The Commission has heard from his Excellency Lord REAY the most enlightening and the most striking exposition that could be given of the reasons in support of the British proposals. This exposition is interesting from several points of view, but above all because it manifests great consideration for the rights of neutrals. Mr. LOUIS RENAULT does not wish to undertake a complete refutation of the thesis upheld with so much authority by his Excellency Lord REAY, but he desires to answer him with a few observations.

His Excellency Lord REAY has very forcibly emphasized the difference between the maritime trade of to-day and that of the past; but it would seem that he has in his illuminating exposition somewhat exaggerated the difficulties in the way of the examination and seizure of contraband of war, in order to bring about the abolition of contraband. It is somewhat of an exaggeration to lay before us only the hypothesis of a cruiser that encounters a steamer carrying a cargo of various kinds, whose character is frequently unknown to the officers, and to point out the annoyances and injuries incurred by neutrals under such circumstances. Other hypotheses may be presented. Vessels may be loaded with a loose cargo of contraband of war, about whose destination there can be no uncertainty and as to the examination and seizure of which there would be no trouble or difficulty. Again, the right of seizure and of confiscation may have a preventive effect. It gives rise to risks which people will frequently hesitate to incur and which will cause a great increase in insurance premiums.

Moreover, it is perhaps a bad thing to give neutral commerce too great facilities. The Declaration of Paris of 1856 materially ameliorated the condition of that commerce. It allowed it to undergo immense development in time of war, which of course is legitimate; but there are some who would now like to go still further, and this cannot be done without certain drawbacks. If we guarantee to neutrals free trade without any restrictions, will they not have considerable interest in the prolongation of hostilities, since their commerce will be in a more favorable situation than in time of peace?

[867] Again, the right of control and of seizure can be made to harmonize with modern ideas concerning the law of war. We have at the present time a more exact conception of the neutrality of States. It was long admitted that neutrals might render belligerents more or less direct aid without absolutely losing their status as neutrals. Nowadays an absolute observance of the duties of neutrality and complete abstention from doing anything whatever in behalf of the belligerents are required. This conception once firmly established, it became

necessary to regulate the relations of neutral subjects with belligerents. For a long time the belligerent claimed the right to isolate his adversary. To prohibit his own subjects from having relations with the latter, and to consider such relations an act of treason—that was his right; but he also wished to extend the same prohibition to the subjects of a neutral country. It was for this purpose and to attain the same object that he proclaimed a fictitious blockade of the ports and coasts of his adversary, and it was from this conception that the principle of contraband of war sprang. It was afterwards admitted that neutral subjects might trade with belligerents, but they could not be allowed to take advantage of this privilege to give aid to belligerents.

In this connection it would be of interest to define the conception of the neutral State as regards its own subjects. Shall a neutral State be obliged to prohibit as unlawful the relations of its subjects with belligerents and exercise a supervision over the goods that they ship? Evidently not. A neutral State cannot be compelled to intervene and must not incur any responsibility for the commerce in which its subjects engage. Then there intervened a compromise between neutrals and belligerents. Neutrals have left it to belligerents to defend themselves and have given them permission to control and, if need be, to seize dangerous commerce. From the non-responsibility of the neutral State arose the right of control and seizure by the belligerent. That is why in their declarations of neutrality States remind their subjects of the duties imposed upon them by their status as neutrals. It is evident that neutral States cannot be indifferent to the fate of their subjects. They intervene to protect them from the risks which they run, but only if there have been irregularities and abuses committed with regard to them.

We must therefore endeavor to regulate in advance the questions of contraband between belligerents and neutrals. If there have been abuses, the abolition, of contraband of war is rather an energetic way of putting an end to them. Will the conception of this contraband disappear entirely upon the acceptance of the formula which the British delegation proposes concerning auxiliary vessels?

It is permissible to have certain doubts on this subject. Shall we not be returning to the control of neutral vessels by this theory of auxiliary vessels? Shall we not decree rigorous measures with regard to them when it is proved that they have intimate relations with the belligerent fleet? The conception of contraband of war will disappear, but neutral vessels that engage in unneutral service will be treated with much greater rigor. It is to be feared that there will be disappointments on this score.

These general considerations have convinced the French delegation of the necessity of continuing contraband of war; but though that is its idea, it nevertheless thinks that there are ameliorations which might be introduced into the system. This is a question upon which public opinion has been heard. President ROOSEVELT has expressed himself on the necessity of progress in this regard, and we might mention an interesting article by Mr. LAWRENCE on contraband of war, which points out the danger incurred with regard to the maintenance [868] of peace as a result of the difficulties in connection with the application of the rules of contraband. The main fault that is found with the present system is its uncertainty, the absence of precise rules. It was with this idea in mind that the French delegation made known the chief features of its proposal.

The system which it proposes has for its starting-point a limitative list of articles constituting contraband of war. The enumeration of these articles belongs to the province of the army and naval officers. It has no place therefore in the present exposition, but it can be prepared by the Commission. Trade in articles of absolute contraband—that is to say, articles that are destined exclusively for use in war—is illicit in itself. At the present time, as soon as hostilities break out neutrals must, without there being need of a special declaration, abstain from trade in such articles. When such articles are captured, the rules that are applied are not the same in all navies. The French proposal¹ requires a single sanction, in the belief that an imperfect rule which is unanimously applied is better than uncertainty which sometimes lays stress on the proportion of contraband in the cargo of the vessel, and sometimes on the good faith of the captain. Now it is probable that if we confined ourselves to including in contraband of war only articles of absolute contraband, the interests of belligerents would not be satisfied. There are circumstances where a belligerent must, depending on the social, economic or military situation of his adversary, prohibit trade in such and such articles, which may be specified by the Commission. These articles are essentially different from other articles. In the first place, they must be made the subject of a formal declaration on the part of the belligerent. That is considerable progress, for by making known at the very beginning of hostilities the articles which will be considered contraband of war, we put an end to the uncertainty which nowadays causes confusion to neutral commerce.

With regard to articles of this second category, the French delegation proposes to apply different rules. It may be that in some cases it can be proved that they are destined for a belligerent fleet or a besieged city. In a word, if the belligerent can clearly prove the hostile purpose of the cargo, he will apply to it the rules of absolute contraband; that is to say, confiscation pure and simple. If, on the contrary, the belligerent cannot prove this, he will merely have a simple right of preemption as regards the suspected cargo. The effect of this provision will be to place a barrier in the way of the temptation to the belligerent to make his list of articles of contraband too long. The exercise of his right of preemption will be a heavy responsibility which he will not be willing to assume lightly. The French delegation believes that this reform will be a noteworthy improvement of the present situation and as such recommends it to the attention of the Commission. (*Applause.*)

His Excellency Mr. **Hammarskjöld** says that it would be interesting to compare the rules on the question of contraband which were practically universally recognized at the beginning of the nineteenth century with the practices in vogue toward the end of the said century and at the beginning of the present one. This comparison would not be in favor of our time. On the contrary, it must be acknowledged that we have returned to the ancient, regrettable practice which seemed to have been definitely abandoned.

At the beginning of the nineteenth century a catalogue of articles of contraband had been compiled by means of a series of international treaties.

In this catalogue, whose contents were adopted by the majority of the Powers of Europe, the application of the principle of contraband was mutually

¹ Annex 29.

[869] determined and was, with few exceptions, confined to articles destined exclusively for military purposes.

This has not been the case in the declarations made by belligerents in recent wars. The rather vague terms of these declarations would not prevent almost any article whatever from being treated as contraband.

In our opinion, says he, this fact is very unsatisfactory. It is quite natural that every project aiming to limit and restrict the domain of contraband of war should be assured a favorable reception by States which, because of their geographical situation and their policy, have a right to expect that they will not be drawn into war.

It goes without saying that from this point of view it would seem to be desirable to abolish contraband, as has been proposed ¹ by the delegation of Great Britain. Our eminent colleague Lord REAY has advanced in favor of this proposal arguments whose great weight is felt by us all. Consequently, in view of the great development that has taken place in our day in means of communication, it would very rarely happen that a belligerent State would succeed in cutting off its adversary through confiscation at sea from the supplies that are necessary for carrying on the war and in influencing thereby the course of events.

The question of abolishing or restricting the principle of contraband of war may therefore be considered a question of rather pecuniary interest. In all cases a state of war is an exceptional situation for all Powers, even those which look upon war as by no means a remote possibility. Consequently the damage which a Power may do its adversary in the course of a war by means of confiscation cannot counterbalance the losses it would suffer when it happens to be a neutral and its maritime commerce is thrown into grievous confusion by the application of the principle of contraband. I shall not pursue further my observations on this subject, in view of the penetrating and exhaustive consideration given it by Lord REAY. I therefore confine myself to stating, in the name of the delegation of Sweden, that we support any project tending to diminish the burdens which the principle now in force concerning contraband of war imposes upon neutral commerce.

His Excellency Mr. Tcharykow desires to explain, before a vote on the various proposals that have been submitted to the Commission, the point of view which the delegation of Russia takes on the question of contraband of war.

In examining, says he, the different solutions of which this question is susceptible, the Russian delegation is before all else inspired by the wish to preserve the general peace. We believe that the time has come to put an end, by means of an international agreement, to the risks to which the relations between States are exposed as a result of the divergent practices which exist in this matter and of the uncertainty there is concerning the rules that may be applied to suppress trade in contraband.

We are glad to recognize the just grounds for the important considerations to which the British delegation called attention at the last meeting of this Commission, and we are disposed to join in the effort to discover means better calculated to prevent international disputes in this matter.

We wish to prevent disputes; but can we be sure that we shall always succeed in avoiding them? The doubt which is permissible on this subject imposes

¹ Annex 27.

upon every State the obligation of providing for its legitimate self-defense. One way of doing this is to prevent the enemy from obtaining from a neutral the things he needs for the waging of war.

The established custom in this matter is not unknown to the British delegation.

That delegation has, even in proposing a new definition of the term "auxiliary vessel," insisted upon the necessity of a belligerent's taking [870] rigorous measures against a vessel, even a neutral vessel, if it is in the service of the belligerent in any capacity whatever, even though it is used merely to carry a reserve supply of provisions, whether it has a cargo or is in ballast.

We also recognize this necessity. It is derived from the irrefutable principle that a belligerent has an absolute right to defend himself and that a neutral who furnishes articles which he needs for the carrying on of hostilities, is himself taking part in these hostilities, is violating neutrality, and thus renders himself liable of his own free will to the consequences of his action.

Nevertheless this principle, however absolute it may be, admits of a limitation—the safeguarding of the interests of legitimate neutral commerce.

I need not recall to you, gentlemen, the attention which the Imperial Government of Russia has for centuries devoted to these interests.

The eminent first delegate of Belgium, in opening the meetings of the Commission over which he presides, related the history of Russia's efforts in that direction with a precision and an eloquence which we all well remember. We remain faithful to these traditions; we keep to this historic ground which has since been fortified by many a treaty. And at the present time it is no longer Russia alone, together with a group of continental States, as in the days of the "armed neutrality" of the eighteenth century, who desires to protect the commerce of neutrals. We have learned from the recent address of his Excellency Lord REAY that Great Britain, on her side, has resolutely come to their defense. We have listened to the detailed statement made by the British delegation of the evils which the commerce of neutrals suffer under the existing system. We have heard also well reasoned objections to applying to these evils the supreme remedy proposed¹ by England, the abolition of contraband. We venture to hope that this Commission will succeed in finding the elements of a unanimous agreement on this grave question, and we are ready to examine, in the sincere spirit of conciliation and good understanding, every proposal made in this sense. We are convinced that it is possible and that it would be very timely to introduce improvements into a situation with regard to which neutrals, as well as belligerents, have reason to complain. We think, as does the delegation of France, that we might endeavor to discover such ameliorations by studying, among other things, the nomenclature of articles that might be declared contraband, a nomenclature for which the list proposed² by the French delegation and that presented by the delegation of Germany³ contain valuable material. Perhaps it would also be possible to find out to what extent we might exclude in future by common agreement from this nomenclature certain articles which have at times been included therein. These points and many others might

¹ Annex 27.

² Annex 29.

³ Annex 28.

be discussed in detail and to good purpose, it seems to us, by the committee of examination of this Commission. They might then be made the subject of an arrangement which, while fully ensuring the interests of national defense, would offer genuine guarantees to the lawful commerce of neutrals and to the peaceful productive labor of all the nations of the world.

Rear Admiral **Sperry** says that the United States, while upholding the doctrine of the immunity of private property at sea, has always recognized as a last resort the right of belligerents to wage effective war. That is why it has always considered contraband subject to confiscation and why it has maintained the right of blockade.

The United States believes that the publication of a list of contraband by a belligerent is not an attack on the rights of neutrals, but that if this right is not abused, such publication is in conformity with their interests.

The first need of a merchant on the outbreak of war is to know what he is free to do; the declaration of contraband settles this matter for him. [871] If the merchant engages in contraband trade, it is assuredly because he finds it to his advantage and covers his risks with insurance.

Again, it is sometimes maintained that the right of visit and search is an attack on neutral commerce; but as a matter of fact the neutral State has given up its natural rights of jurisdiction with respect to its own vessels on the high seas, when it permits visit and search by a belligerent in time of war, and that mainly not with an eye to the interests of the belligerent, but with the view of permitting the neutral State to grant its subjects the privilege of engaging in commerce freely and as they see fit, without being obliged to take preventive measures.

What is necessary is to avoid measures originally conceived in a spirit of mutual usefulness that would admit of abuses from which commerce would suffer unjustly.

The delegation of the United States does not believe it possible, where conditions are constantly changing, to formulate a list of articles of contraband that would continue satisfactory for a period of years. That is why the proposal made by that delegation to confine contraband of war in very restrictive but general terms to articles which are always used for military purposes, and then to limit conditional contraband by strict provisions concerning its quality and its quantity. For example, according to these rules a cargo of petroleum for heating purposes could not be seized as contraband, being destined exclusively for peaceful use; but petroleum which may be used on war-ships can certainly be considered contraband, if shipped in considerable quantities.

As regards the declarations made by the second delegate plenipotentiary of Germany¹ at the last meeting of the Commission concerning the inviolability of postal correspondence, the delegation of the United States declares itself to be wholly in favor of this principle and is pleased to hope that it will be introduced into a draft convention.

His Excellency Mr. **Hagerup** states, in the name of the delegation of Norway, that he supports the British proposal.² As regards a country whose merchant marine, which amounts to about three million tons, has found itself in the past, and may find itself in future, in the vicinity of the theater of war, the

¹ Annex 28.

² Annex 27.

British proposal touches its vital interests and offers important advantages. The British proposal, as well as his Excellency Lord REAY's speech, will be an interesting monument of the Conference itself on this point, and even if it is not adopted, it will be of historical importance. Without wishing to enter into political considerations, which, as the president has pointed out, are not within the scope of the Conference, we can nevertheless note as a remarkable fact that it was Great Britain—the greatest Power of the world, who up to the present time has felt herself obliged, because of the very aims of her policy, to favor the extension of the rights of belligerents and who, in the absence of special treaties, has always reserved the right of adding a great number of articles to the lists of contraband—that it was this Power who said: We have recently had experience as a neutral and as a belligerent, and this experience has convinced us that in these days the advantages which the belligerent derives from the application of the principle of contraband of war do not offset the inconveniences, the injuries, and the dangers incurred by neutrals. The development that has taken place in our day in sea and land transportation has changed conditions in the matter of contraband of war. It has, on the one hand, diminished its advantages for the reasons that the carrying of contraband is now not so frequently done by sea; and, on the other hand, it has increased the dangers [872] because the great tonnage of the vessels has augmented the risks of the belligerent, as well as the injuries to neutrals. His Excellency Lord REAY has demonstrated that this necessary change which time has wrought in the matter of contraband has brought about a state of inequality and injustice. It is for this reason an argument which has been emphasized by the partisans of inviolability of private property at sea. His Excellency Lord REAY has also recalled with great point that diplomatic documents show that much tact and patience have been necessary to prevent claims which have arisen with regard to contraband of war from degenerating into armed conflicts. By eliminating the source of such disputes, the Commission will be working for the cause of peace.

Mr. LOUIS RENAULT's address, by the force of the arguments which it set forth, by the eloquence which pervaded it, certainly made a deep impression upon the Commission; but it suggests three principle comments on the considerations which it contains and which are urged against the abolition of contraband. (1) During the past century the rights of neutrals have been enlarged; the freedom of neutral commerce has been recognized more and more; and now it is the wish to attain absolute freedom. Mr. LOUIS RENAULT asks himself whether it will not then become dangerous to peace, whether neutrals who find a state of war profitable to them will not consider it to their interest to prolong it. These are the arguments which were also urged against the inviolability of private property at sea. In my opinion, they are not more conclusive on that subject either, but we can understand the point of view more or less. But how can the interests of neutrals—or rather the interests of the commercial classes of neutral nations—exert an influence on the prolongation of wars? It is the belligerents, not the neutrals, who are first and foremost the masters in this matter. (2) The development of the conception of contraband of war is, according to Mr. RENAULT, the counterpart of the non-responsibility of the State with regard to the acts of its subjects. It cannot be denied that this is the line which the question has followed. Neutral States have certainly gained much in freeing themselves of responsibility and leaving their *ressortissants* under the

control of the belligerent; but can we not follow a different line to-day? And can we not regard it as possible to abolish both the control over individuals and the State's responsibility? Great Britain has replied in the affirmative. (3) Mr. LOUIS RENAULT, finally, asks himself whether after abolishing contraband of war¹ and adopting the British theory² of the auxiliary vessel, we would not be doomed to disappointment; but it would seem to follow from the English declaration that the theory of the auxiliary vessel is not the counterpart of the abolition of contraband of war, and on this point his Excellency Lord REAY's words are perfectly explicit.

His Excellency Mr. HAGERUP intends to vote against the British proposal concerning auxiliary vessels, but he believes that if the two English proposals are nevertheless adopted, the small States will derive a great advantage from them. It will follow that neutral vessels may not enter into relations with a belligerent fleet, but may freely trade with enemy ports. Mr. RENAULT does not seem to have furnished evidence that we are following the wrong course. But if the Commission nevertheless believes that the time has not yet come to abolish contraband of war and if it considers it advisable to regulate contraband by convention, it must take a step forward and put an end to the uncertainty that exists as to the rules of contraband. It will succeed in doing this on two conditions: (1) that it determine rules on conditional contraband; (2) that it explain the theory of continuous voyage. At the present time the subjects of neutral States do not know how far they can go nor in what articles they may lawfully trade. We must also settle the question whether belligerents have [873] absolute right to define the articles which will be considered contraband of war. If uncertainty is to continue, it is better to refer the question to a subsequent conference. The proposals which the German and French delegations³ have submitted to the Conference deserve serious consideration, and if the Commission does not think that it ought to support the British proposal, the aforesaid proposals might serve as the basis for an amelioration.

His Excellency the Marquis de SOVERAL joins whole-heartedly in the tribute paid by his colleague the first delegate of Norway to the spirit of the proposal of the delegation of Great Britain relative to the abolition of the principle of contraband of war.¹

He is right. This act will remain a monument of lofty wisdom and of great self-denial. His Excellency the Marquis DE SOVERAL adds: "I express the wish, gentlemen, that all of us, the British delegation included, may be inspired by this spirit in examining the very important questions which are soon to be brought up and upon whose solution the reputation of the Second Peace Conference will depend."

His Excellency Mr. Ruy Barbosa next takes the floor and speaks as follows:

We cannot exaggerate the importance of the question of contraband of war in the deliberations of the Peace Conference. It is not one of those questions in which it can be said that it is merely a matter of mitigating the evils of war. Much of a positive nature is to be done in the interest of peace with regard to this question.

¹ Annex 27.

² Annex 2.

³ Annexes 28 and 29.

As Mr. WESTLAKE showed us long ago, every rule tending to prevent the belligerent from obtaining supplies from the markets of the world results in assuring victory to that one of the two enemies who is better prepared at the start, and consequently in compelling States to keep themselves constantly in readiness for war, thus rendering it more probable, obliging nations to maintain continually ruinous armaments, and increasing the chances of war because of the advantages which it assures to those who make unexpected attacks, since those who believe themselves to be better armed have a superiority over others in an immediate rupture, which superiority they will be led to take advantage of at the earliest moment by precipitating a conflict.

Therefore at a time when we see the tendency of wars to become more and more naval wars reaching its climax, the doctrine of contraband of war is one of the most potent causes of the excessive increase in armaments in time of peace.

If we wished to make genuine progress against this calamity by an indirect route when the direct route appears to be inaccessible, we could do nothing more useful than to limit simply the system of contraband, to abolish entirely this alleged right of belligerents, continuing only the right of blockade. That is what has long been held by Mr. LORIMER, by Mr. VON BAR and of late by Mr. WESTLAKE.

The English proposal would bring about this progress. We have only to applaud it and to seize upon it with eagerness, although we do not believe it to be easy to harmonize the maintenance of the right of belligerents to confiscate private property at sea with the abandonment by belligerents of the right to seize military contraband. Logically we cannot see how we can guarantee militant, aggressive commerce and at the same time declare inoffensive, peaceful commerce to be hostile. Furthermore, two things which clash when they meet in the domain of logic, may be made to harmonize in the domain of considerations of a different character. But however that may be, the English proposal is a great measure which should be taken up by the friends of the cause of [874] peace; and when we cannot succeed in everything that logic may require, we must content ourselves with the portion that policy yields to us.

Unfortunately we have already seen divergences of view spring up against this proposal which must kill it, a truly lamentable state of affairs, in our opinion. We shall lose this opportunity of removing from international law, on the initiative of one of the beneficent and glorious Powers of the world, an ever-recurring source of unjust abuses, of disputes between belligerents and neutrals, since we have hitherto been unable to find in the matter of contraband of war any law other than the right resulting from the interest of belligerents, whose courts will sit in judgment and, to quote the words of Mr. HOLLAND, "there will only remain to neutral Governments the passive duty of acquiescence."

Everything therefore would seem to indicate that this institution which generates wars will not receive the fatal blow in this Conference. We shall do nothing more than regulate it. But at least in regulating it let us endeavor to limit it in a way that will be advantageous. That is the endeavor of the American proposal,¹ of the French proposal,² but above all, in our belief, of the Brazilian proposal.³

¹ Annex 31.

² Annex 29.

³ Annex 30.

Permit me to call your attention to it. Our project has not the merit of originality, which, for the rest, cannot be claimed in favor of any other. Every useful exploration has already been made on this subject; we have only to choose between the solutions that have been worked out. That is why I shall not comment on ours. It is based in general on ideas that were studied and formulated eleven years ago by the Institute of International Law, with a few minor modifications.

As a compromise, it is the most advanced project that has been proposed here. It does not disarm belligerents, but it leaves them in the right of preemption a valuable privilege with regard to articles of relative and accidental contraband, which will go out of existence. But at the same time it does all that is possible under the system of contraband to prevent its becoming, as has happened heretofore, a system of war on neutral commerce.

His Excellency **Réchid Bey** states that, while supporting the opinion so eloquently expressed on the necessity of the continuance of the rule hitherto in force with regard to the seizure of contraband of war, the Ottoman delegation, with the idea in mind of giving the desired facilities and freedom to commerce, declares itself in favor of the greatest possible limitation of the articles that are to be considered contraband of war.

His Excellency Lord **Reay** states that he is somewhat surprised at the position taken in the matter of contraband of war by the delegation of the United States.¹ He desires to recall an eloquent note which Secretary of State **MARCY** addressed on July 28, 1856, to the Minister of France at Washington, reading as follows:

As connected with the subject herein discussed, it is not inappropriate to remark, that a due regard to the fair claims of neutrals would seem to require some modification, if not an abandonment, of the doctrine in relation to contraband trade. Nations which preserve the relations of peace should not be injuriously affected in their commercial intercourse by those which choose to involve themselves in war, provided the citizens of such peaceful nations do not compromise their character as neutrals by a direct interference with the military operations of the belligerents. The laws of siege and blockade, it is believed, afford all the remedies against neutrals that the parties to the war can justly claim. Those laws interdict all trade with the besieged or blockaded places. A further interference with the ordinary [875] pursuits of neutrals in nowise to blame for an existing state of hostilities is contrary to the obvious dictates of justice. If this view of the subject could be adopted, and practically observed by all civilized nations, the right of search, which has been the source of so much annoyance, and of so many injuries to neutral commerce, would be restricted to such cases only as justified a suspicion of an attempt to trade with places actually in a state of siege or blockade.

Humanity and justice demand that the calamities incident to war should be strictly limited to the belligerents themselves, and to those who voluntarily take part with them; but neutrals, abstaining in good faith from such complicity, ought to be left to pursue their ordinary trade with either belligerent, without restrictions in respect to the articles entering into it.

Though the United States do not propose to embarrass the other pending negotiations, relative to the rights of neutrals, by pressing this change in the

¹ Annex 31.

law of contraband, they will be ready to give it their sanction whenever there is prospect of its favorable reception by other maritime Powers.

As for Mr. LOUIS RENAULT, his Excellency Lord REAY always listens to his speeches with great pleasure when he is of the same opinion. He has listened to him to-day with even greater pleasure, because, if so eminent a man has no stronger arguments to urge against him, it is because the British thesis is based upon sound reasons. Mr. LOUIS RENAULT believes that if neutrals are allowed entire freedom of commerce, they will have an interest in the prolongation of hostilities; but the reform which Great Britain proposes is not to be combated by the feeble possibility that neutrals may exert an influence on the declaration of war. And if we consider the effect that a state of war may have on the economic and financial life of neutral nations, we may be led to the conviction that their general interest will be on the side of the restoration of peace.

Mr. LOUIS RENAULT holds that conditional contraband is susceptible of a certain limitation, but his Excellency Lord REAY believes that there will be no less arbitrariness as long as the belligerent is free to declare certain articles contraband of war. The right of preemption is not a mitigation of conditional contraband; it would not prevent difficulties from arising, and innocent populations might suffer the same fate as belligerents and be deprived of things necessary to their existence. It was with pleasure that his Excellency Lord REAY heard Mr. LOUIS RENAULT state that neutrality consists in abstaining from all hostile aid. That was the idea on which was based the theory of auxiliary vessels, although it forms the subject of a different chapter of the law of nations.

Replying to the first delegate of Brazil, the speaker states that he does not see the connection between the right to seize enemy property and the seizure of articles of contraband, which are neutral property. These two questions are independent of one another. He thanks his Excellency Mr. HAGERUP for his very interesting address and hopes that the British proposal¹ will receive the Commission's sanction.

His Excellency Mr. Porter says, in reply to his Excellency Lord REAY, that since the old-fashioned policy of MARCY the Government of the United States has had experience and at the present time prefers the more modern policy of ROOSEVELT.

His Excellency Mr. Ruy Barbosa, in his turn, replies as follows:

We have heard the brief, categorical reply which our eminent colleague, Lord REAY, has been good enough to make to an incidental point in my little speech. This clear challenge obliges me to make answer.

[876] In the first place, it should be observed that I am not open to suspicion in this matter. I had spoken in support of the British proposal regarding contraband of war. It was only incidentally that I said I could not well understand it in view of the English opposition to the immunity of private property at sea. It was therefore an incidental remark which our honorable colleague has done me the honor to take up. I must reply to such a mark of distinction.

I have long been accustomed to look upon my illustrious opponent as one of the living masters in this branch of law. His labors, especially in the Institute of International Law, are known to me. They entitle him to our respect.

¹ Annex 27.

But the authority of the masters is founded merely upon the superiority of their reasoning. Well, in this case our estimable colleague has not given me a single reason. He has confined himself to saying squarely that there is no connection between the question of contraband of war and that of immunity of private property at sea in naval warfare. Why? He has not told us. Therefore I venture to urge against his assertion pure and simple the reason for my dissenting opinion.

Is there indeed no relation between these two questions? I hold, on the contrary, that there is a direct and manifest relationship. Do you wish for the proof? I shall give you an immediate and striking one. In the American proposal it is stated that enemy private property is exempt from capture, with the exception of contraband of war. Hence in that proposal the immunity of enemy private property is laid down as the general rule and contraband of war is made an exception to such immunity. But can we specify as exceptions to a rule cases which, if they were not so excepted, would not be included in the rule? No; an exception is merely a species detached from the genus covered by the rule. Now, can there be a closer relationship between two ideas than that between the species and the genus? Therefore the two ideas are closely related.

From what angle do the representatives of Great Britain now regard the two questions? They transpose the terms of the American attitude, declaring private property, with the exception of contraband, liable to capture. Contraband was subject to seizure in the American proposal. Contraband is not subject to seizure in the British proposal.¹ But does it for this reason cease to be a special case of private property at sea?

Evidently not. It is still private property at sea. According to the system of the British delegation, maritime property is liable to capture, but contraband of war is not. That is to say, we make war on ordinary commerce and abstain from making war on commerce in articles of a military character. But it is still commerce, still private property. Can there be a closer relationship? If this private property consists of products that are of no use in military operations, it can be confiscated as general commerce. But if it consists of products serviceable in war, then, as contraband of war, it is guaranteed against seizure. Is there not a manifest inconsistency, as manifest as the relationship is close? I should like to hear anyone prove the contrary.

Mr. **Max Huber**, in the name of the Swiss delegation, expresses the opinion that the proposal of the British delegation to abolish the prohibition of contraband seems to be the most equitable solution of the problem which the Commission is discussing to-day, because it gives the most effective protection to the interests of the commerce of neutral States which are at all times in the great majority.

If the British proposal could be adopted, one of the most troublesome difficulties of international law would be overcome, and it would be easier to [877] settle other related questions in such a way as to reconcile freedom of neutral commerce with the legitimate interests of belligerents.

The **President** states that two different opinions have manifested themselves: one aiming to abolish contraband, which is maintained by Great Britain, Norway, Portugal, and Switzerland; the other, upheld by France² and the United

¹ Annex 27.

² Annex 29.

States of America,¹ maintaining the principle of contraband, but with certain ameliorations. He also states that all are agreed as to the uncertainty in the rules of contraband and as to the recognition of the belligerent's right of legitimate self-defense. All are likewise in agreement as to granting neutral commerce the broadest guarantees. Such being the state of affairs, the committee of examination can draw up articles on the bases that have been adopted by all. If it were otherwise, the Commission would be permitted to express its opinion by a vote.

His Excellency Sir Edward Fry insists that the Commission vote on the principle of the abolition of contraband. He asks that this vote be postponed to the next meeting, so that the delegations may have time to give the various proposals thorough consideration. He is convinced that the more the British proposal is examined, the more acceptable it will be found.

The President declares the discussion of the question of contraband of war closed. The vote on this question is postponed to the next meeting. The Commission will then return to the discussion of days of grace and the questions following.

The meeting adjourns at 4 o'clock.

¹ Annex 31.

[878]

TENTH MEETING

JULY 31, 1907

His Excellency Mr. **Martens** presiding.

The meeting opens at 10:50 o'clock.

The minutes of the eighth and ninth meetings are adopted.

The **President** recalls that the program calls first of all for a vote on the proposals of the delegation of Great Britain relative to the abolition of contraband of war.¹ The Commission has expressed the desire to vote on the proposal as worded in the synoptic table.² The **PRESIDENT** reads this proposal and announces that certain delegates have asked permission to speak before the vote is taken.

His Excellency Baron **von Macchio** then takes the floor and speaks as follows:

The British delegation's proposal relating to the abolition of contraband of war was the subject at the last few meetings of this Commission of a highly interesting analysis, in which a large number of our honorable colleagues developed all the arguments that could be advanced for or against this proposal.

The delegation of Austria-Hungary also duly appreciates how advantageous the system upheld by the British delegation in this liberal proposal would be to the commerce of neutrals in time of war. It believes that one of the main objects of the present Conference is not only to mitigate the evils of war, but to limit as far as possible its deleterious effect outside the jurisdiction of the belligerent parties, that is to say on the lives, the property, and the general well-being of neutrals. Moved first of all by the important interests of the latter, the Austro-Hungarian delegation does not hesitate to declare itself to be in sympathy with the principle of the complete abolition of the conception of contraband of war. That is to say, it will vote for the British proposal, if it is put to vote; but be it understood that it desires to exclude therefrom the question of the definition of auxiliary vessels, which, as a matter of fact, as the British delegation has itself declared, is not the counterpart of the proposal which is now before us.

[879] The Austro-Hungarian delegation, however, has no illusions as to the practical consequences of this vote, in view of the divergent opinions which have been expressed in the course of this illustrious assembly's discussion.

It must therefore contemplate now the possibility of the British proposal's not receiving the required unanimous vote.

Now we have also before us the proposals of the German, French, and Brazilian delegations, which, though maintaining the principle of contraband,

¹ Annex 27.

² Annex 32.

are on the whole an obvious amelioration of the present situation and are all inspired by a desire to remedy in some degree the uncertainty, the instability, and the lack of precise and generally recognized rules, all of which are at the present time sources of the greatest inconvenience and of the greatest risk to the commerce of neutrals.

The Austro-Hungarian delegation therefore reserves the right to support that one of these projects which would give the most restrictive interpretation to contraband. It believes that all these proposals contain valuable ideas and admit of the hope that an agreement can be reached on the basis of a compromise between the above-mentioned projects.

The **President** announces that the Commission takes official note of the remarks of his Excellency Baron VON MACCHIO.

Count de la Mortera declares that in the absence of instructions the Spanish delegation will abstain.

His Excellency Mr. Keiroku Tsudzuki makes a similar declaration. The delegation of Japan nevertheless reserves the right to declare itself later on if there should be occasion.

His Excellency Mr. van den Heuvel desires to explain in a few words the attitude of the Belgian delegation.

It has given its adhesion to proposals whose object is to proclaim respect for the private property of belligerents at sea and to ensure it the same protection as enemy property on land. It will give its adhesion to proposals whose purpose is to proclaim respect for freedom of neutral commerce at sea and to remove the restrictions which have been placed upon it to the detriment of the general interest.

Too often has it been said that the interests of neutrals must bow before the rights of belligerents. This point of view seems to us incorrect. Neutrals and belligerents have their respective rights. The essential thing is to reconcile them without sacrificing those of the one to those of the other.

The system of contraband, as it has been framed in recent years, is no longer a system derived from the belligerent's legitimate right of self-defense. It is a system that goes far beyond the requirements for the carrying on of hostilities. It is absolutely arbitrary in its provisions concerning relative contraband and in its presumptions in the matter of continuous voyage. It greatly disturbs and interrupts not only the peaceful relations between neutrals and belligerents, but also the relations between neutrals themselves.

The great ocean highways must remain open to the goings and comings of nations and no barriers must be erected thereon: *Mare Liberum*. On sea as on land neutral individuals must be in a position to claim complete freedom for their commerce.

All that belligerent States may ask is that neutral States or individuals shall keep within the bounds required by their neutrality. Consequently, on the one

hand, neutral States recognize their right to carry on hostilities and the fact [880] that the conditions of war cannot be changed either by restrictions or

by assistance; and, on the other hand, they are themselves armed against intervention on the part of neutral individuals by the right of arresting vessels which are manifestly directly aiding the enemy forces and by the right of taking action against those who attempt to violate a declared and effective blockade.

That is why the Belgian delegation will vote in the affirmative on the progressive proposal of the British delegation.¹

The abolition of contraband would in time of war place insular States and those having a long coastline in the same situation as continental States, which because of the facilities of internal transportation can continue to supply freely the necessities which their people require.

It would benefit all alike, great and small, the belligerents of to-day who will be the neutrals of to-morrow. It would wipe out a thousand sources of difficulty and dispute.

His Excellency Baron **Marschall von Bieberstein** observes that the English proposal contemplates the abolition of contraband. This would apparently be a great advance in favor of neutral commerce. But the English proposal with respect to the definition of war-ships in reality maintains the system of contraband by bringing about a situation as regards neutral merchant ships which, in our opinion, would be much more precarious than under the present system. For example, a neutral merchant ship carrying contraband, under the system now in force, may be seized, but the validity of the seizure must be confirmed by legal process. But this same vessel, if suspected of carrying supplies for the enemy fleet might, according to the English proposal, be considered a war-ship of the enemy; and the vessel, its cargo and crew would be treated as forming part of the enemy fleet. Then "*causa finita*." No legal recourse would be open.

It would appear, therefore, that the two English proposals form an inseparable whole. His Excellency Baron **Marschall von Bieberstein** does not object to the **PRESIDENT'S** proposal that a vote be taken on the proposal contemplating the abolition of contraband of war; but since such a vote might give rise to false impressions outside the Conference, he desires to state that the German delegation in voting against the abolition of contraband has no intention of refusing an advantage to neutral merchants, but quite the contrary desires to preserve the system of contraband because that system appears to be much better and much more advantageous to neutral commerce than the new system proposed by the English delegation.

His Excellency Mr. **Choate** recalls that at the last meeting the delegation of the United States stated that it preferred the attitude of President **ROOSEVELT** on the question of contraband to that of Secretary of State **MARCY**.

The delegation of the United States having communicated with him is to-day in a position to state, in his name, that the United States, desiring to favor neutral commerce as much as possible, considers it better to place certain restrictions on contraband of war rather than to adopt the abolition of the system which would very likely give rise to questions of such gravity as to render their solution difficult.

His Excellency Lord **Reay** desires once more to state that there is no connection between the question of the abolition of contraband of war and the definition of an auxiliary vessel. The delegations which vote in favor of the abolition of contraband of war¹ remain free therefore to declare themselves against the theory of an auxiliary vessel, and *vice versa* those which will not admit this abolition may adopt the definition of auxiliary vessels.

¹ Annex 27.

The **President** recalls that the Commission decided to vote at to-day's meeting on the question of contraband. All the declarations concerning contraband of war will be inserted in the minutes and in casting their votes the delegations will bear these different declarations in mind.

In the course of the debates two opinions have been expressed. The first, supported by the British delegation,¹ is in favor of the abolition of contraband of war; the second, upheld by the French delegation,² is based on the necessity of maintaining the system of contraband. However, an agreement has manifested itself on two points: no one disputes the belligerent's right of legitimate self-defense; nor does anyone dispute the fact that it is the duty of neutrals not to intervene in hostilities. The Commission is agreed to leave belligerents the right to take measures against the hostile commerce of neutrals. Finally, there is a fourth point upon which all opinions are at one, and that is that all have discovered that there are abuses and that reforms are necessary, especially in the matter of defining precisely articles of contraband, thereby giving neutral commerce better guarantees than it has at present.

The Commission proceeds to vote; thirty-five delegations take part therein.

Yeas, 25: Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Cuba, Denmark, Dominican Republic, Great Britain, Greece, Italy, Mexico, Norway, Paraguay, Netherlands, Peru, Persia, Portugal, Salvador, Serbia, Siam, Sweden, Switzerland.

Nays, 5: Germany, United States of America, France, Montenegro, Russia.

Not voting, 5: Spain, Japan, Panama, Roumania, Turkey.

On the proposal of the **President** the Commission decides to charge the committee of examination with the preparation of a text which will harmonize the proposals that have been made.

His Excellency Mr. Ruy Barbosa demands a vote on the Brazilian delegation's proposal;³ the Commission has been able to study the different systems which have been submitted and which follow more or less broad lines; it must pass upon them in the order of their scope. If the Commission adopts this view, it must vote first of all on the Brazilian proposal and then on the others. The work of the committee of examination will thus be simplified.

The **President** is of the opinion that under these circumstances there must first be a general discussion on the British proposal, then on those of Brazil, of Germany⁴ and of France in the order given. Not to prolong the discussions, it would perhaps be preferable to allow the committee of examination, as in the other Commissions, to endeavor to draw up a text that will harmonize the different proposals.

His Excellency Mr. Ruy Barbosa agrees to this method of procedure.

His Excellency Mr. Carlos Concha takes the floor and speaks as follows:

From the projects which have been submitted to the Commission it appears that there is a marked tendency to restrict relative contraband by confining it to articles directly destined for the land or naval forces of belligerents, and, on the other hand, to leave free from all restraint trade

¹ Annex 27.

² Annex 29.

³ Annex 30.

⁴ Annex 28.

between individuals in these articles, as indicated in the proposals of Germany and of France.¹

The delegation of Chile, on its side, would be glad to see the total abolition of relative contraband, not only in order to give commerce greater security, but also in order to avoid numerous disputes between nations, which arise in matters of contraband.

Having it in mind to show the errors of judgment to which the classification of articles of contraband give rise, we shall venture to point out what has occurred in the case of a substance which is used in agriculture and in manufactures in Europe for essentially peaceful purposes and the sale of which reaches the figure of 300 to 400 millions of francs a year.

We refer to *nitrate of soda*, which has always been classified among the articles constituting contraband of war, in spite of its employment in agriculture and manufactures. We venture therefore to call the attention of the committee of examination to this point, in order that this substance may be removed from the list of articles considered contraband of war.

In support of our opinion, we quote what RIVIER says in his "*Principes du Droit des Gens*":

At the instance of the merchants of Hamburg, the German Government declared itself in principle against the contraband nature (of nitrate of soda) and promised to endeavor to have its view adopted in favor of saltpeter and nitrate of soda.

As a matter of fact, the proportion of nitrate which enters into the manufacture of powder is so insignificant that it does not deserve to be taken into consideration.

Nitrate of soda is first of all—and this is its chief and most important quality—a fertilizer, the fertilizer *par excellence*, the fertilizer without which agriculture in general and the cultivation of cereals and beets in particular would be menaced in their productivity to such an extent that it might lead to complete ruin.

Nitrate is, moreover, a very important factor in the industries, particularly in the mining industry, where it is used in the preparation of the explosives necessary to dislodge the wealth concealed in the bowels of the earth. The construction of ports, the boring of tunnels, in short, all the vast works of modern progress, require nitrate for their accomplishment.

It may therefore be asserted that in the present state of agriculture, of the industries, and of modern progress, *nitrate* is an *indispensable* element, an element of peace, of civilization and of wealth, and not an element of destruction.

It would be difficult, if not impossible, to demonstrate mathematically the exact quantity which is used in various ways; but we can estimate, without fear of error, that eighty per cent of the present supply of nitrate is used as a fertilizer in agriculture. Of the remaining twenty per cent only half, rather less than more, enters into the composition of explosives, and an insignificant quantity is used in the manufacture of powder.

Europe alone consumed last year (1906) *one million two hundred and forty-one thousand four hundred tons* of nitrate. This enormous quantity was distributed among the principal European countries as follows:

¹ Annexes 28 and 29.

	Germany	559,040	tons
	France	213,180	"
[883]	Belgium	178,100	"
	Netherlands	120,640	"
	Great Britain	106,950	"
	Italy	46,520	"
	Austria	6,840	"
	Sweden	5,320	"
	Spain	4,670	"
	etc., etc.		

The mere enumeration of these figures would amply suffice to show what an enormous economic disturbance would ensue if *nitrate* were included among the articles that constitute contraband of war.

The opinion that nitrate should be considered contraband of war because it served in the manufacture of powder was warranted fifty or sixty years ago. At that time the production of nitrate was insignificant as compared with its production at the present time, and then it was scarcely used in agriculture, for its fertilizing qualities were not sufficiently well known. It was used chiefly in the manufacture of explosives and powder. But between that time and the present day conditions and the importance of nitrate have wholly changed. Nitrate has become a fertilizer of universally recognized efficacy, and although its production has increased by giant strides, practically all that is produced is destined for agriculture.

With the view of illustrating our demonstration, I am supplementing my remarks with a table in which the increase in the production of nitrate from 1840 to 1904 by five-year periods can be followed.

In conclusion, I must present my excuses for having taken the liberty of calling the Commission's attention to a point which is of great interest to Chile, the only country that produces nitrate, and which involves the vital interests of the agriculture and industries of the whole world.

1840-1844	73,232	tons
1845-1849	94,806	"
1850-1854	149,960	"
1855-1859	259,394	"
1860-1864	327,034	"
1865-1869	487,324	"
1870-1874	1,095,628	"
1875-1879	1,365,418	"
1880-1884	2,220,926	"
1885-1889	3,318,520	"
1890-1894	4,813,670	"
1895-1899	6,204,636	"
1900-1903 (4 years)	5,537,396	"
Total	25,947,944	"

The **President** states that the Commission takes official note of these different declarations and that they will be submitted to the committee of examination.

[884] The **PRESIDENT** reminds the Commission that the program calls for the discussion of the question of days of grace, which has been carried over from last week. The Commission was then unanimously of the opinion that it was desirable to allow a period of grace to enemy merchant ships in belligerent waters on the outbreak of hostilities, but it has not yet passed upon the question whether this period is a right belonging to the enemy merchant ship or a favor that may be refused. The French delegation¹ made a proposal on this subject, the examination of which was postponed until to-day's session, because the majority of the delegations at that time were without instructions.

His Excellency Mr. **Hammarskjöld** declares himself in favor of an obligatory period of grace. However, any proposal tending toward an obligation, even a restricted or conditional obligation, seems to meet with insuperable objections on the part of certain Powers whose co-operation is indispensable. On the other hand, all are unanimous in recognizing that a period of grace should be granted. In these circumstances he believes that it would be advisable to mention this unanimity in the text of the eventual convention. It has at the same time been his desire to combine the Russian² and the French proposals, in order to preserve the advantage of the very useful provisions which both of these proposals contain. That is the intent of the Swedish amendment³ which the Commission has before it. The two proposals which the Swedish amendment combines being already known, his Excellency Mr. **HAMMARSKJÖLD** hopes that it may be possible to discuss his amendment at this meeting, together with the above-mentioned proposals.

His Excellency Mr. **Tcharykow** requests the floor on a question of revision: The delegation of Russia modifies the reading of its proposal² as follows:

Article 1, line 3: substitute the word "*suffisant*" (sufficient) for the words "*de faveur*" (of grace); and

Article 2, line 2: omit the words "*de faveur*" (of grace).

These two articles will then read:

ARTICLE 1

In the event of a merchant vessel of either of the belligerents being overtaken by war in the port of the other belligerent, the latter must grant this vessel a sufficient period, in order to allow it, etc.

ARTICLE 2

A merchant ship which, owing to circumstances of *force majeure*, has been unable to leave the enemy port within the period above mentioned, etc.

His Excellency Vice Admiral **Mehemed Pasha** observes that the object in allowing days of grace to enemy merchant ships, which on the outbreak of hostilities happen to be in a port belonging to one of the belligerents, is to protect the interests of non-combatants.

¹ Annex 20.

² Annex 18.

³ Annex 21.

If it be left to the pleasure of belligerents to grant this period of grace, the rule which we desire to establish will not be permanently and generally effective. The period of grace should be obligatory and sufficiently long to permit these vessels to reach in safety the nearest port belonging to their Government or to a neutral Government.

[885] His Excellency Lord **Reay** desires to recall, before the Commission proceeds to vote, that the British delegation supports the formula proposed by his Excellency Count **TORNIELLI**.

Mr. **Louis Renault** says that the French delegation is not in favor of the obligatory character of days of grace. Under these circumstances the Swedish proposal, which does not involve any obligation on the part of the belligerents, might be supported. It is, as a matter of fact, difficult to establish by convention a distinction between the vessels which a belligerent may, and those which he may not, detain. This interpretation of days of grace, which is the same as that of his Excellency Lord **REAY**, permits the Commission to support the Swedish proposal under the reservation of the important amelioration that, although the belligerent has the right to detain, he has not the right to confiscate. The Commission cannot raise any objection to voting for a proposal which, while preserving the period of grace, makes use of the words: "*It is desirable . . .*"

The **President** notes that the divergences of opinion which have been expressed in the Commission bear upon the obligatory character of the period of grace. He asks whether the Commission is willing to confine its vote to the question of principle alone, and to leave it to the committee of examination to work out the text of a draft convention.

His Excellency Sir **Edward Fry** says that two questions must be elucidated, namely: (1) Whether the days of grace will be obligatory or optional; (2) Whether, in the event of their being declared optional, there should be an accompanying declaration to the effect that it is desirable that they be granted.

The **President** states that the Commission is in unanimous agreement upon this point—that it is *desirable to allow days of grace*—and proposes that a vote be taken on the optional or obligatory character of the period of grace.

Rear Admiral **Sperry** says that the delegation of the United States is of the opinion that a well-established principle of international law recognizes that enemy merchant ships, which on the outbreak of hostilities happen to be in the ports of a belligerent, have the right to depart freely. This right is, however, subject to the restrictions dictated by military necessity.

His Excellency Mr. **Nelidow** believes that there are two distinct questions: (1) that concerning the right of enemy merchant ships, which on the outbreak of hostilities happen to be in belligerent waters, to depart freely without requiring a period of grace; (2) that concerning the right of these same vessels to obtain a period of grace in which to complete their loading or unloading.

The **President** replies that the Commission must pass upon the following questions: (1) Must or may the belligerent allow vessels to depart? (2) If these vessels have a right, is this right a limited or an unlimited one?

His Excellency Mr. **Ruy Barbosa** remarks that his Excellency Mr. **NELIDOW** raises a different question from that which was submitted to the Commission. The obligation of permitting vessels to depart freely but immediately must not be confused with that of granting a period of grace.

His Excellency Mr. **Nelidow** replies that this distinction was suggested to him by Rear Admiral **SPERRY**'s declaration.

The **President** believes that the Commission must pass upon the question whether the belligerent is obliged to permit or may permit the vessel to [886] depart. Matters of detail like those contained in the French proposal concerning the right to detain and requisition are within the province of the committee of examination.

His Excellency Mr. **Choate** asks that the question upon which the Commission is to vote be drawn up in writing.

Mr. **Kriege** requests that a vote on the obligatory character of days of grace be deferred until after the question has been studied by the committee of examination. Certain delegations, a very few, do not recognize this obligatory character. The question which seems to concern them above all is that of merchant ships that are capable of being converted into war-ships. The Netherland proposal meets what they have in mind. If the committee could draw up a project taking their ideas into consideration, it would perhaps be easy to reach an agreement. If the Commission does not now adopt this view, if it desires to proceed to a vote to-day, the German delegation will vote in the affirmative on the obligatory character of the period of grace, reserving the right to vote for modifications and amendments that are capable of bringing about an agreement among the delegations.

His Excellency Lord **Reay** being of a similar opinion, on the proposal of the **President** the Commission concurs in the views expressed by Mr. **KRIEGE** and directs the committee of examination to make a report.

The **President** opens the discussion on questions IX and X of the *questionnaire*, which read as follows:

IX. Is it necessary to modify the terms of the Declaration of Paris of 1856 as to blockade in time of war?

X. Is it desirable to determine, in the convention to be concluded, the universally recognized consequences of the breaking of an effective blockade?

The **PRESIDENT** remarks that the question of blockade is not specifically included in the program drawn up by the Russian Government. The Commission might therefore have raised objections thereto, but its abstention implies its consent to pass to a discussion thereof. The basis of the question is to be found in the Declaration of Paris of 1856, which is itself founded upon the convention of the League of Neutrals of 1780.

His Excellency Mr. **Ruy Barbosa** files the following proposal, which is an amendment¹ to the Italian proposal² on blockade:

1. A blockade is effective, under the conditions stipulated in the Italian proposition (Article 2), only when it is limited to ports, roadsteads, anchorages, bays, or other landing places on the enemy shore, as well as places giving access thereto.

2. The Conference shall fix a certain number of miles, calculated from the coast, at low tide, or from an imaginary line between the extremities of the port or of the bay, as well as from the said extremities along the coast, in order to limit the area within which the blockading fleet shall carry on blockade operations.

¹ Annex 36.

² Annex 34.

3. When a vessel is captured within these limits, the above-mentioned conditions having been fulfilled, no question as to the effectiveness of the blockade may be raised.

4. Notice as provided in Article 4 of the Italian proposition shall, in all cases, be presumed to be known, unless the contrary is proved, to vessels [887] which have left ports within the jurisdiction of the notified Government seven whole days after the date of the said notice.

5. Changes in the blockade must likewise be notified and shall not bind neutrals unless the geographical limits are indicated in accordance with the provision above, Article 2.

His Excellency Count **Tornielli** states that he cannot vote upon the Brazilian proposal without having previously studied it.

The Italian delegation has prepared an explanatory statement with regard to its proposal, which Mr. **Guido Fusinato** reads:

Mr. President, contraband and blockade are the two great restrictions which war has placed upon the commerce of neutrals in the present state of positive international law. But while the whole world is agreed as to the principle upon which the prohibition of contraband of war rests, whatever may be the divergences and difficulties in its practical application, there is no such agreement in the matter of blockade. The different points of view as regards its nature and its foundation engender, moreover, striking divergences in the legal regulation of this institution. The broadest application of blockade cannot be justified except by recognizing that belligerents have the right to forbid all commerce between neutrals and a portion of the enemy coast. It is only on this theory that we can speak of the obligation on the part of neutrals to respect the prohibition declared in this regard by the belligerent and of the belligerent's right to punish neutrals whenever their intent to infringe such a prohibition in any place whatever is clearly proved. The employment of force would be merely a means of carrying out this right and the belligerent might resort to it at his pleasure.

But this view of blockade is utterly at variance with the principles of positive international law, which lay down the general rule of absolutely free trade between neutrals and belligerents, with the exception of contraband of war. Aside from this, the belligerent has no right to prohibit neutral commerce and neutrals are not obliged to obey him.

On their side, however, belligerents have the right to carry out any military operation which they deem calculated to aid in bringing about final victory, subject to the limitations which international law impose upon them. They may, in naval warfare, blockade any enemy port or any portion of his coast, just as they may besiege a city in land warfare. Blockade is indeed merely the isolation of a portion of the coast and a prohibition of access thereto by means of force. This results in a restriction on commerce which neutrals are necessarily obliged to suffer, just as they are obliged to submit to the inevitable consequences of acts of war on the part of belligerents. It is the operation of war as such which they are bound to respect. It is from these principles that the justification of blockade, as well as the limits of its application, is derived.

The divergences in the conception of blockade and in its establishment have been the subject of well-known historical controversies between maritime States.

The Declaration of Paris of April 16, 1856, finally settled these disputes. In proclaiming that "blockades, in order to be binding, must be effective," it determined precisely and definitely the characteristics of this institution. It follows that neutrals are bound to respect blockades only in so far as they have the [888] characteristics and aspect of a war operation, and consequently only within the limits and in the places where such an operation can be effectively carried out.

The proposal which the Italian delegation has the honor to submit to the examination of the high Assembly is merely the development of the principles sanctioned by the Declaration of Paris. This instrument comprises simply a definition which, while containing the germ of later solutions, nevertheless gives rise to doubts and uncertainties as to its practical application. It is the task of the present Conference to resolve these doubts and to clear up these uncertainties by developing the spirit of the Declaration of 1856 and by codifying the logical consequences which follow therefrom. That is just what the Italian delegation has endeavored to do.

The definition of blockade, the formalities pertaining to its notification, the penalties for its violation—such are the essential points in the legal regulation of the matter.

The provisions which we have the honor to lay before you in Articles 2 and 3 of our project aim to complete and to make more precise the definition of the Declaration of Paris. Article 4 attempts to harmonize the practical and the respective force of general notification and of special notification in the domain of the good faith and respect due the rights and interests in question. Article 5 contains the most important consequence of the conception of blockade as set forth in Article 1. It lays down the principle that a vessel may not be seized for violation of blockade except in the act of attempting to run a blockade that is binding. The delegation of the United States of America has presented an amendment¹ to this article, which would materially modify its force. It is, however, to be hoped that a common basis of agreement can be reached. As for us, we are of the opinion that recognizing the effectiveness of a blockade as the first condition of its binding force is equivalent to declaring that the basis and essence of blockade consists entirely in the actual exercise of military power by the belligerent over the blockaded zone. It necessarily follows that blockade does not begin until such military power is established; that it ceases as soon as that military power ends; and that it can have no effect or consequence where that military power does not actually exist. In other words, blockade is merely an act of war inseparable from the places where war is waged, and there can be no violation thereof or punishment for such violation except in these places.

Mr. President, the extraordinary development that has taken place in the methods of communication on land has without doubt deprived blockades to a great extent of their former importance. Blockade has not, however, ceased to be one of the most serious attacks on the rights of peaceful commerce. Blockade is a war measure aimed at neutrals rather than at the enemy. Indeed, in the present state of international law blockade is not necessary in order to prohibit enemy vessels from continuing their commerce. To confine blockade within its true limits by perfecting the work begun by the Powers in 1856 and by establishing

¹ Annex 35.

equitable conditions that will harmonize the exigencies of war with the interests and rights of commerce, this is one of the tasks of the present Conference. If it succeeds in accomplishing this, it will have greatly contributed to the good cause of international justice.

His Excellency Sir **Ernest Satow** asks that certain modifications¹ be made in the Italian proposal:²

Article 2, paragraph 1: substitute the word "real" for "evident."

[889] Article 3: see amendment proposed by the delegation of the United States of America.³

Article 4, paragraph 2: substitute the words "a neutral vessel approaching" for "the vessel approaching."

Article 5: see amendment proposed by the delegation of the United States of America.³

His Excellency General **Porter** proposes, in the name of the delegation of the United States of America, that the following amendment³ be made to the Italian proposal:²

Article 5: Omit the article and substitute:

Any vessel which after a blockade has been duly notified, sails for a port or a place that is blockaded, or attempts to force the blockade, may be seized for violation of the blockade.

That is in accordance with the practice which has long existed and with international law.

His Excellency Baron **Marschall von Bieberstein** declares, in the name of the German delegation, that he accepts the Italian proposal as it stands.

Mr. **Georgios Streit** says that the Hellenic delegation, in voting for the Italian delegation's proposal on blockade, would like to make it perfectly clear that its vote on this question refers solely to blockade in time of war and does not concern so-called peaceful blockade, the legitimacy as well as the legal effect of which has not been discussed in the deliberations of this high assembly.

His Excellency Baron **von Macchio** states that the Austro-Hungarian delegation supports the Italian proposal.

After announcing that at its next meeting the Commission is to return to the question of blockade and vote upon the Brazilian proposal, the **President** adjourns the meeting at 12:10 o'clock.

¹ Annex 37.

² Annex 34.

³ Annex 35.

[890]

ELEVENTH MEETING

AUGUST 2, 1907

His Excellency Mr. **Martens** presiding.

The meeting opens at 3:15 o'clock.

The minutes of the tenth meeting are adopted.

Count de la **Mortera** states that the Spanish delegation, having received instructions from its Government concerning the abolition of contraband, adheres to the British proposal.¹

The **President** replies that the Commission takes official note of this declaration.

Mr. de **Beaufort** informs the Commission that his Excellency Mr. **Nelidow** regrets that a slight indisposition has prevented his attending the meeting and that he has requested him to read the following telegram to the Commission:

Deeply touched by your kind telegram, I thank your Excellency, as well as the representatives of the Powers assembled at the Second Peace Conference at The Hague very sincerely for the congratulations which your Excellency has been good enough to transmit. (Signed) **EMMA**. (*Great applause.*)

The **President** recalls that two weeks have elapsed since the Commission postponed its vote on the French *vœux*.

Their Excellencies Sir **Ernest Satow** and Count **Tornielli** having called attention to the fact that this vote was not included in the program for the day, the Commission decides to postpone the vote on the French *vœux*² to the next meeting.

The **President** recalls that the Commission is to return to the question of blockade, the general discussion of which is closed. As regards this subject, there is an amendment of the Brazilian delegation³ to the Italian proposal.⁴

His Excellency Mr. **Ruy Barbosa** requests the floor to justify this amendment in a very few words:

The country which I have the honor to represent, says he, including within its boundaries almost half of South America, has a coastline on the Atlantic Ocean of 6,500 kilometers, wonderfully rich in ports, bays, and [891] roadsteads scattered along its tremendous length. Our coast plays a vital part in the provisioning of our country. Along it are our principal centers of wealth, the great storehouses of our products and our commerce. We have a population of fishermen, who form the nursery of our sailors, and a coasting trade that is still small, but essential to our needs, which assure it a great develop-

¹ Annex 27.

² Annex 16.

³ Annex 36.

⁴ Annex 34.

ment. Our destiny, therefore, looks to the sea, where our geographical situation and the tremendous length of our maritime frontier places the problem of our future.

That is why we have followed in this Conference with such eager attention matters relating to naval warfare. Among them is the question of blockade. As concerns this subject, our interest is not less than that of the great Powers. Although Brazil is a peaceful nation and is merely thinking of its own defense, it is not improvident and does not forget the needs of its existence, which are the more calculated to preoccupy it since it is not a military State.

You can well see that it is not difficult to explain our intervention in this debate. You certainly will not share the impatience with which our assiduity in these discussions would have been received by those who spurn that distant and unknown Latin America, whose voice had never been heard in an Assembly of the Powers. Give no heed to our contingent, if, in your opinion, it is worth nothing. But be good enough to take into account our great anxiety to respond to the honor of your invitation and your hospitality.

In the matter of blockade we accept with pleasure the Italian proposal. It contains excellent measures, which we would not like to disregard or to weaken. It is with the idea of adhesion and of solidarity, it is in that spirit that we have drawn up our amendment. It does not contravene the system set forth in the project nor does it change its mechanism. It merely strives to strengthen it. It adds something to it; it takes nothing from it, either in form or in substance. It is, as we have declared in the heading, simply an addition.

Considering that blockade is "the most serious injury that war can inflict upon the rights of neutrals"¹ it must be subjected to the strictest conditions, so that it may not overstep the bounds of necessity and expose the legitimate interests of neutrals to abusive restrictions on the part of belligerents. Such is really the aim of the Italian proposal, which seems to us to be inspired on the whole by the ideas which the Institute of International Law adopted in 1883 in its codification of the law of prize. And it seems to us that the Italian delegation has attained this object in a way that is well-nigh entirely satisfactory. We are not ignorant of the fact that with this people of artists and jurists the execution is always a marvel of elegance and of tact in matters of law as in matters of art.

However, the same anxiety to avoid, under the pretext that they are operations necessary to war, attacks on the rights of neutrality, encourages us to propose certain additional precautions which will confine this instrument of military aggression to its natural functions.

In the first place, having in mind to make our proposal rather declarative, we deemed it advisable to use a more definite expression with regard to the effectiveness of the blockade by declaring that it must be confined to places of definite access on the maritime frontier, that is to say, ports, roadsteads, anchoring grounds, or other bodies of water where it is possible to embark or to disembark. That is the exact deduction from the definition of blockade as given by Lord STOWELL,² and generally accepted as complete,³ according [892] to which the usual and regular mode of enforcing blockades is "by stationing a number of ships, and forming, as it were an arch of circumvallation

¹ Cauchy, *Droit maritime international* (Paris, 1862), ii, p. 196; Fiore, ii, p. 446.

² *The Arthur*, 1814, 1 Dodson, pp. 423-425.

³ Smith and Sibley, p. 323.

round the mouth of the prohibited port." "Blockade," says Mr. DUPUIS in his work on naval warfare, "has never been anything else than the justification of the prohibition of the commerce of neutrals with the enemy by means of deploying the forces of the belligerent before *places* to which this prohibition *specifically applies*."¹

It would therefore be advisable to require the specification of blockaded places; and that is the subject of Article 1 of our additional amendment.

But since we must reduce to reasonable limits the scope of the prohibition, without which belligerent cruisers would be given an indefinite field of action against neutral vessels, it has been thought necessary to confine its scope to a certain number of linear miles from the shore, as well as along the coast. That is covered by Article 2. The idea is not ours. It has been culled by those who are authorities and is to be found formulated by Sir THOMAS BARCLAY in his recent work, from which we have drawn our inspiration on this point.

As a corollary to these material and insuperable restrictions which would be placed upon the severities of blockade, it would be quite natural to lay down the rule that when these conditions had been verified, the question of the effectiveness of the blockade would be considered closed as regards vessels seized within such limits. That is the declaration contained in Article 3.

But that must be subordinated to the notification clause, covered by Article 4 of the Italian proposal. It admits in the first place general notification, which is sent either through military or diplomatic channels to the authorities of the place blockaded, and to the governments of neutral States; but it also provides for blockades without notice, that is to say, *de facto* blockades, authorizing in such cases special notification by the authorities of the blockading squadron to neutrals vessels which, unaware of the situation, may cross or approach the line of blockade. We concur on all these points.

When, however, we give rise, by means of general notification, to so serious a presumption against neutrals and expose them to the penalty for violation, it would be unjust not to fix a period of time sufficiently long, so that vessels might be considered as having knowledge of the blockade and be liable to the penal consequences for violation thereof. To this end we believe that approximately a week would be a reasonable period, since we must take into consideration not only vessels at anchor in roadsteads, to which the declaration of blockade can be made known as soon as notice is given, thanks to instantaneous electric communications, but also those at sea, which cannot be reached immediately. To provide for such cases a time limit is fixed upon the expiration of which the notice is presumed to have been received. But this presumption cannot be absolute. It must admit proof to the contrary, in view of the fact that the period will in many instances be insufficient for all vessels at sea to reach a point on the coast where they can receive news of the blockade.

Such a situation is provided for by Article 4.

Finally, by requiring that changes in the blockade be notified in a manner similar to its initial declaration and that there be geographical limits to the places newly blockaded, in order that rights of war against neutrals may follow therefrom, Article 5 merely deduces an application of Article 4 of the Italian proposal. It might be regarded as implied therein. But it does not appear to us superfluous to make it explicit.

¹ Charles Dupuis, *Le droit de la guerre maritime*, p. 202.

I have finished, Mr. President. I should be glad if the delegation of Italy would look upon my amendment simply as a tribute to the importance of its proposal.

[893] The Commission decides that the Brazilian amendment shall be submitted to the committee of examination.

His Excellency Vice Admiral **Mehemed Pasha** informs the Commission that the Ottoman delegation accepts the proposal of the Italian delegation¹ relative to blockade, with the amendments proposed by his Excellency Sir **ERNEST SATOW**, namely, Article 2, paragraph 1, and Article 4, paragraph 2.²

The President replies that the committee of examination will take into account the observations that have been presented.

Mr. **de Beaufort** speaks as follows:

At our last meeting the honorable delegate of Greece made a declaration in which he expressed the opinion that the proposal of the Italian delegation does not apply to so-called pacific blockade. I share this opinion. I believe that the question whether pacific blockade is admissible and, if so, under what conditions, is one that should be kept out of our debates. We are not concerned with it for the time being. What, in my opinion, must be made perfectly clear is that the rules that have been proposed relate solely and exclusively to blockade in time of war. I think that this is also the idea which inspired the Italian delegation, and I flatter myself that I shall not encounter any objection on its part if I propose³ that the two elementary principles of blockade in time of war be inserted in its proposal, in order to make it plain that the rules which we are about to discuss are not applicable to so-called pacific blockade, but solely to blockade in time of war. It goes without saying that when the principle is adopted, I leave it to the honorable delegates of Italy to decide upon the place which this provision should occupy in the Italian proposal.

Mr. **Louis Renault** has no intention of criticizing the Netherland proposal. He merely makes reservations with regard to the wording, which seems to give it a meaning different from that which it really has.

Mr. **Guido Fusinato** concurs in the observations presented by Mr. **GEORGIOS STREIT** and Mr. **DE BEAUFORT**. The Italian proposal does indeed refer solely to blockade in time of war. Its wording, moreover, corresponds with that of the *questionnaire*, which is very explicit in this respect.

Lieutenant Colonel **van Oordt** had intended to speak a few words at the meeting of Wednesday, July 31, on the American amendment⁴ to Article 5 of the Italian proposal. But since it was already late, he deferred until to-day the remarks which he has the honor to submit to the kind attention of the Fourth Commission.

At the preceding meeting the honorable second delegate of the United States of America said that the extension of the right of capture with regard to neutral vessels in the matter of blockade, contained in the American amendment, is in conformity with long established practice and with international law. Hence it would follow that the American amendment merely states a rule that is rather generally admitted.

¹ Annex 34.

² Annex 37.

³ Annex 38.

⁴ Annex 35.

The speaker believes, on the contrary, that the rule stipulated in Article 5 of the Italian proposal contains the principle more generally admitted and that the extension of the right of capture, as contained in the amendment of the delegation of the United States of America, is an exception to the ideas current on this subject.

The practice of capturing a neutral vessel at any time during its voyage toward the blockaded coast is a relic of the times of fictitious blockades, since in those days there was no line of blockade, where vessels which desired to attempt to run the blockade could be stopped.

[894] Capture on the high seas was merely the necessary complement of fictitious blockades, which otherwise would have become a dead letter.

But since 1856—that is to say, since it has been stipulated by convention that a blockade, in order to be binding, must be effective—the question has entirely changed.

In practice the great difference between the measures which a belligerent takes against trade in contraband and those which he takes against access to the blockaded enemy coast, is that he knows that when a blockade fulfills the essential condition of being effective, the vessel must, in approaching or leaving the blockaded coast, cross the line of blockade, while contraband can be imported without immediate danger at its place of destination. That is why the line of blockade can be considered a well-defined stage in the voyage toward the blockaded port.

There is still another remark to be made on this subject, which is not without importance. A blockade is not binding unless it is effective, and from this rule it follows that any neutral vessel which is not laden with contraband has the right to continue its voyage toward the blockaded coast, because until it has reached that coast, no one can tell whether the blockade will still be effective when the vessel arrives there.

Seizure before the line of blockade is reached is therefore premature.

Practice renders inevitable seizure on the high seas of a vessel carrying contraband of war before the act of entering an enemy port has begun, that is to say, at a time when it may still change its intention, since if it were not admitted that the vessel carrying contraband is "*in delicto*" during the entire voyage, it would be practically impossible to effect the seizure. The same necessity arose with regard to blockade in the days of fictitious blockades, since there was then no line of blockade to cross.

Nowadays, on the contrary, we can, at least in the matter of blockade, follow a more equitable course, that is to say, not punish a vessel for violation of blockade until such violation has actually begun. That is why the right of pursuit after violation of blockade in leaving a blockaded place is legitimate, since the offense has been committed and the high seas are part of the theater of war.

The extension of the right of capture contained in the American proposal is, in fact, nothing else than the application of the practice of fictitious blockades to effective blockades. To allow a belligerent the right to seize vessels sailing for a blockaded port before they have attempted to enter it, is adding the danger of being seized on the high seas to the imminent danger of crossing the line of blockade (the essential characteristic of an effective blockade). It is, in substance, extending the blockade, as it were, to every quarter of the high seas, where it cannot be effective. Finally, it is subjecting seizure to the chance of

meeting a cruiser of the blockading State. This, according to the events which resulted in the Declaration of Paris of 1856, is in contradiction with the very conception of an effective blockade.

The President states that the committee will take into account the observations presented by Lieutenant Colonel VAN OORDT.

In the name of the Argentine delegation, his Excellency Mr. Carlos Rodríguez Larreta accepts the proposals on blockade presented by his Excellency Count Tornielli and supported by Mr. Guido Fusinato at the last meeting in a remarkable address.

He permits himself on this occasion to offer his congratulations to the delegates of Italy.

[895] His Excellency Mr. Hagerup observes that in taking up the question of submarine mines, the first subcommission of the Third Commission considered it from the point of view of blockade and asked itself whether submarine mines by themselves could be considered as rendering a blockade effective. It concluded that this question was rather within the province of the Fourth Commission and charged its President to make this communication to this Commission.

His Excellency Lieutenant General Jonkheer den Beer Poortugael says that the Italian proposal makes use of the words "naval forces." The question therefore is whether submarine mines may be considered "naval forces."

His Excellency Brigadier General de Robilant replies that these submarine mines must be brought by national ships and that these ships constitute naval forces.

His Excellency Count Tornielli says that in paragraph 3 of the British proposal concerning the employment of mines there is the following provision: The use of submarine automatic contact mines to establish or maintain a commercial blockade is forbidden.¹

In the course of the debates which took place in the Third Commission, of which I have the honor to be President, the question was examined under its two aspects, that is to say, the Commission considered whether this provision should be ranged with those governing the employment of means of inflicting injury in war operations or whether it belonged to questions pertaining to the means whereby the effectiveness of a blockade could be maintained. Under the former of these two aspects the British proposal was certainly within the province of the Third Commission, but under its other aspect it belonged to the program of the Fourth Commission.

His Excellency Mr. HAGERUP, in his capacity as President of the subcommission of the committee which had the matter in charge, has therefore asked that you combine the examination of this question with the part of your work concerning blockade. I join him in this request.

The President remarks that there is but a single Conference, and it is a matter of indifference whether a question is decided by this Commission or that.

His Excellency Sir Ernest Satow believes that the two Commissions might be combined.

The President proposes that the two committees of examination meet in joint session and draw up a project.

Mr. Guido Fusinato thanks the delegations of Brazil and of the Argentine Republic for their appreciative remarks with regard to the Italian proposal.²

¹ *Ante*, Third Commission, annex 9.

² Annex 34.

As for Brazil's amendments,¹ which do not affect the principle of the said proposal, they will be examined in the committee of examination with all the attention that they deserve.

After stating that these divers declarations will be laid before the committee of examination, which is to meet to-morrow morning, the **President** thinks that, if time permits, the Commission might pass to an examination of the next numbers of the *questionnaire*. Nevertheless before proceeding farther, the Commission might take up a question concerning which the British delegation has filed a proposal,² to which the delegation of Belgium has proposed an [896] amendment.³ It is whether the crew of a captured enemy merchant ship shall be treated as prisoners of war.

His Excellency Sir **Ernest Satow** says that the British delegation accepts his Excellency Mr. VAN DEN HEUVEL's amendment.

The **President** declares that, no one having raised any objection, the British proposal as amended by the Belgian delegation is referred to the committee of examination.

The Commission, following the order of the *questionnaire*,⁴ must now take up the destruction of neutral prizes as the result of *force majeure*.

The British delegation not being prepared to discuss this question, since it does not appear upon the day's program, his Excellency Sir **Ernest Satow** requests that its examination be postponed to the next meeting.

The **President** then proposes that the Commission take up the question of inviolability of postal correspondence.

Mr. **Kriege** states that he has nothing to add to the observations which he has already presented on the subject of contraband of war. The committee of examination will express its opinion and will consider by what formula this inviolability of postal correspondence may be sanctioned.

His Excellency Sir **Ernest Satow** states that he reserves the right to present amendments before the committee of examination.

The **President** proposes, under the circumstances, that the Commission pass to question XIII of the *questionnaire*: Are coastal fishing boats, even though they belong to subjects of the belligerent State, lawful prize?

His Excellency Count **Tornielli** presumes that everybody agrees that coastal fishing boats should be freed from the risks of war. It would seem that this general rule ought not to give rise to any very lengthy discussion.

As regards question XIV of the *questionnaire*, it would appear to be difficult for the Commission to study the application of the rules of land warfare to naval warfare. This is rather within the scope of the committee of examination.

His Excellency Lieutenant General **Jonkheer den Beer Poortugael** asks permission to make a few remarks on question XIII. He is indeed of the opinion that coastal fishing boats are not lawful prize, but he would like to go still farther. The fishing industry has undergone great changes within the past twenty years. The boats must nowadays go further to sea and are much larger, but they are none the less incapable of being converted into war-ships. Why, therefore, seize them? why impoverish the populations living along the coast, innocent populations who are not concerned in questions of war, populations who have

¹ Annex 36.

² Annex 45.

³ Annex 46.

⁴ Annex 1.

no other means of livelihood than the products of the sea? In our century we must broaden the field of justice and not bring ruin to the essentially innocent fishing industry.

Captain **Castiglia** remarks that, while respecting the right of fishermen to carry on their calling freely, we must, however, prevent them from coming [897] too close to naval forces. They may have on board dangerous engines, such as torpedoes or mines, which render their presence in the neighborhood suspect.

His Excellency Lieutenant General Jonkheer den Beer Poortugael concurs in Captain CASTIGLIA's observations and adds that the keeping of fishing vessels at a distance is the opposite of seizing them.

The President proposes that the program for the meeting of next Wednesday, August 7, be drawn up. It will consist of the vote on the French *vœux*¹ and the examination of questions XI, XII, XIII and XIV of the *questionnaire*.²

According to his Excellency Sir **Ernest Satow**, the Commission will not be able to discuss question XIV to any purpose until it is in possession of the report of the Second Commission on the laws and customs of war on land. It is to be feared that in these circumstances the discussion cannot take place on the 7th instant.

His Excellency Count **Tornielli** declares that his remarks referred only to coastal fishing boats, for question XIII of the *questionnaire*³ mentions nothing except such boats. If it is desired to consider the big steam vessels of the present day, which engage in fishing in distant waters, the wording of question XIII should be changed.

His Excellency Baron **von Macchio** desires to recall that the Austro-Hungarian delegation filed an amendment⁴ to the French *vœux*¹ and reserves the right to develop it and to have it discussed at the next meeting before a vote is taken.

The President recalls that the committee of examination is to meet to-morrow morning at 10 o'clock. He proposes that there be added to the committee Messrs. GUIDO FUSINATO, Captain BEHR and his Excellency Mr. AUGUSTO MATTE, who have filed amendments and will thus be enabled to defend them. (*Assent.*)

The meeting adjourns at 4:15 o'clock.

¹ Annex 16.

² Annex 1.

³ *Ibid.*

⁴ Annex 17.

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'I'WELFTH MEETING

AUGUST 7, 1907

His Excellency Mr. Martens presiding.

The meeting opens at 10:50 o'clock.

The minutes of the eleventh meeting are adopted.

The President observes that if the Commission wished to hold fast to its program, it should proceed at once to vote on the *vœux* proposed by the French delegation, but he presumes that it will see no objection to postponing its vote until the French plenipotentiaries arrive and to beginning with the discussion of questions XI and XII of the *questionnaire*¹ relative to the destruction of neutral prizes as the result of *force majeure*. The Commission has received several proposals on this subject: the proposals of Great Britain² and of the United States,³ and the amendments of the delegations of Japan⁴ and of Russia.⁵

Colonel Ovtchinnikow of the Admiralty takes the floor and speaks as follows:

The question of the destruction of merchant ships under a neutral flag as the result of *force majeure* raises at times a divergence of opinions which makes an international agreement desirable.

This divergence may be seen even in the proposals which have been submitted to our Commission. Two of these proposals demand absolute prohibition of the destruction of merchant ships under a neutral flag seized as prizes and recommend the release of any neutral vessel that cannot be brought before a prize court. On the other hand, the Russian and the Japanese proposals permit in certain exceptional cases the destruction of such vessels and give—as, for instance, our proposal—certain satisfactions and guarantees to the interests of neutrals.

I have taken the floor to present a few general considerations concerning the matter.

(1) At the very outset, I desire to call the attention of this high assembly to the confused language which has been used in regard to the question and which may give rise to certain misunderstandings.

In all the proposals, and even in ours, such expressions are used as “the destruction of a *neutral prize*,” “a captured *neutral vessel*,” etc.

[899] As a matter of fact, it is not a question of “neutral vessels” but of vessels of *neutral nationality*, which have committed violations of their neutrality.

¹ Annex 1.

² Annex 39.

³ Annex 42.

⁴ Annex 41.

⁵ Annex 40.

There is no reason for seizing, still less for destroying, a vessel of neutral nationality which is really neutral. But a vessel under a neutral flag, which has violated its neutrality by a hostile act cannot be treated as a neutral vessel.

It is in the sense which I have indicated that the Russian proposal concerning the destruction of a neutral prize is to be understood.

(2) In discussing this question we must keep the following points in mind.

From the *legal* point of view there is often a misconception with regard to the real rôle of the *act* of capture and of the *judgment* of the prize court.

What is the rôle of a decision of a prize court and when does the captor State secure a property right to the seized vessel and cargo?

I shall answer this question categorically. It is the *seizure* or *capture* itself which transfers ownership of the seized vessel and cargo to the captor State. A judicial decision never creates a new right, it merely recognizes a right which already exists. The prize court decides whether the prize is lawful or not; that is to say, having considered the circumstances of the seizure, the time and place where the seizure was effected, the character of the capturing vessel and of the captured vessel and cargo, the prize court pronounces judgment on the question whether the vessel and the cargo were liable to confiscation at the time when the seizure took place.

Therefore the decision of the prize court always has a retroactive effect and, if the prize is lawful, the captor State possessed the property right from the moment of capture.

This fact established, we can now see that in destroying a vessel, which is sailing under a neutral flag but which has clearly violated its neutrality, the captor is destroying his own property and not property belonging to others. He is thus acting against the interests of his own fortune, and that is why only absolutely exceptional cases will induce him to follow this procedure.

(3) In concluding the legal and pecuniary aspect of the matter, I desire to present certain supplementary observations:

(a) It is of course understood that every case of the destruction of a prize must be brought before a prize court, which will decide whether the capture was lawful or not.

(b) On board a destroyed vessel there may have been, in addition to the articles liable to confiscation as contraband of war, other articles which might have been released by the prize court, if they had been brought before it and thus restored to their original owner.

The question arises: How are the interests of these owners to be guaranteed in case of the destruction on board a destroyed vessel of their goods that are not of a contraband nature?

The answer to this question is to be found in Articles 29 and 30 of the Russian regulations of March 27, 1895, concerning prizes. These regulations read:

Article 29. If the cargo which should be restored has been destroyed by order of the authorities, the owner shall be reimbursed the value of the destroyed cargo as per an estimate based upon the information furnished.

Article 30. Apart from this value, a special indemnity as damages resulting from this capture may be granted the original owner, if it is decided [900] that the cargo was captured on insufficient grounds or in violation of the prescribed conditions.

(c) Under our law the same principle of indemnification is applicable in cases where according to the judgment of the court the vessel itself was unlawfully destroyed; that is to say, when the vessel was not at the time of seizure liable to confiscation.

I have the honor to call the Commission's attention to Articles 29 and 30 of the Russian regulations, which I have quoted, as furnishing material for the committee of examination to work on.

(4) There is still another question which may raise certain doubts—the question of the fate of the crew and passengers on board a destroyed vessel.

In our proposal¹ it is clearly stated that “the commanding officer of the capturing vessel may not exercise the right of destruction except with the greatest caution and *must* be careful first to transfer the men.”

It may perhaps be objected on this score that the crew and passengers transferred to the capturing ship, that is to say, a ship of war, will be less safe from the dangers of war than if they were on board their own vessel.

To this objection I make answer that this misfortune to the crew is occasioned, not through the fault of the captor, but through that of the owner or captain, who violated the neutrality of a merchant ship of neutral nationality.

In any event, it may be stated that in recent wars in cases of the destruction of prizes of neutral nationality, the question of the fate of the crew and passengers has never caused any difficulties.

Such are the considerations of a legal nature which prove that destruction, if occasion demands, is not only admissible but lawful.

(5) Moreover, purely practical and military considerations may be invoked in this matter.

As I have just stated, it is always preferable to preserve the seized vessel and to bring it into a port of the captor's country.

But in naval warfare, it is often impossible to preserve the vessel and to bring it to a safe place or, for still stronger reasons, to release it.

Let us suppose, for example, that in the vicinity of the place of capture there happens to be an enemy vessel which is much stronger than the captor, and that the seized vessel is sailing under a neutral flag and is loaded entirely with contraband of war, such as cartridges, projectiles, powder and explosives of all kinds. It would certainly be much more profitable to the captor to preserve this vessel and these articles of contraband of war for his own needs. But the preservation and bringing in of this prize are impossible because of the nearness of a powerful enemy.

Can we insist in this case upon the release of the seized vessel? I think it is evident that such a release would be an outright act of treason against his country on the part of the captor. Nothing remains for him to do but to destroy the prize.

Again, the prize may sometimes be accidental. A war-ship having a special object encounters at sea a vessel that is loaded entirely with contraband of war and makes the capture, so to speak, in passing.

By reason of the fact that the ports of the captor are too far distant or else blockaded, the preservation and bringing in of this prize might jeopardize the safety of the capturing vessel or the success of its operations. We must ask ourselves how the captor should act in this case.

[901] It is true that such a question assumes an aspect of gravity only in the

¹ Annex 40.

case of Powers that have not a certain number of ports in distant seas. The absolute prohibition of the destruction of prizes would give rise to a situation of marked inferiority in the case of Powers that have no colonies as compared with those that have.

The tendencies which have been expressed in certain proposals that have been laid before the Conference concerning the admission of prizes to neutral ports would seem calculated to aggravate this inferiority.

Thus, in the example which I have just given, it is often easy for the captor to change his course and bring the prize into a nearby port of his country. If the captain makes haste, he can send his prize to this nearby port under the command of one of his officers.

The same course could be followed and the prize could be taken or sent to a neutral port, if conventional law allowed prizes access to and a sufficiently long time to remain in neutral ports.

But in the absence of such an international agreement and in view of the rules prohibiting prizes to enter and to remain a sufficiently long time in neutral ports, there is only one thing for the captor who finds himself in the circumstances I have indicated to do and that is to destroy the seized vessel.

Such are the arguments of a legal, practical, and military character which I have the honor to present in support of the proposal¹ of the delegation of Russia concerning the destruction of prizes seized while sailing under a neutral flag, but violating their neutrality.

I believe that it is evident that the absolute prohibition of their destruction is inadmissible; that is to say, that their destruction is lawful under the circumstances indicated in the above-mentioned proposal.

His Excellency Sir **Ernest Satow** presents, in turn, the following observations:²

The question raised by the declaration made in our name is the following: Do the principles of international law at the present time permit a belligerent to sink a neutral vessel which he has seized?

We have considered it advisable to bring this problem to your attention and to ask you to pass upon the question whether it is desirable to modify the present provisions of the law of nations in this respect. But in order that the question may be examined in the fullness of knowledge, it would seem to be desirable to sum up in a few words the present situation. That is what I shall try to do.

The theory that the belligerent has the right to sink a neutral prize was advanced for the first time, if I am not mistaken, in the course of the recent war in the Far East. Regarded from a general point of view, this would seem to be a very strange principle, and the belligerent State and the neutral State being at peace with one another, the destruction of a vessel belonging to a friendly Power would seem to constitute on the part of the belligerent an act of aggression, which it is incumbent upon him to justify. It may be objected that this reasoning is equally applicable to the case of a neutral vessel that is seized and brought before a prize court. I would be the first to admit the force of this reasoning, but it must not be forgotten that belligerent Powers have long exercised the right of seizure and the judicial rights flowing therefrom without any opposition on the part of neutrals, and that this practice, which may at first sight seem unlawful, has acquired through this fact a legal character which cannot be contested. Can

¹ Annex 40.

² Annex 39.

we say that this is the case when it is a question of the alleged right to [902] sink a neutral prize? I do not think so. So far as I am aware, no instance can be cited where a neutral State has recognized as lawful practice in war the destruction of one of its vessels before a prize court has condemned it. It would seem therefore that unless it can be proved that there is a series of precedents in support of this alleged right, or at least consent in the past on the part of neutrals to the exercise of this right equivalent to an express recognition of the legitimacy of the act, it cannot be maintained that international law permits at the present time the destruction of a neutral prize. There are perhaps reasons why there should be added in future to the rights which a belligerent possesses that of sinking neutral prizes, on condition that it is not exercised unreasonably: thus, we might invoke considerations of a military character; the necessities of the moment, the lack of ports and coaling stations, the great area of the theater of war, the vast field of commercial activities, to prove that a change is necessary; but it is not possible to hold that the existence of the right we are seeking to establish has been recognized in the past. One of our most eminent professors of international law in England has even maintained that the texts of the jurisprudence of certain countries implied the existence of this right; but a study of these texts has enabled us to discover that he had made an error and that, although only mentioning prizes in general terms and not expressly excluding neutral prizes, these texts refer especially to enemy prizes with regard to which there could be no uncertainty, since the right of belligerents to sink them in certain cases has long been recognized. But even if it had been the intention of the legislators in these countries to grant this right in the matter of neutral prizes, that fact would have had no force from an international point of view without the concurrence of the other States, and it is precisely this concurrence that is lacking in this case. For the same reasons questions XI and XII of the *questionnaire* are not to be taken into account in so far as they pertain to laws in force in certain States.

I believe that it is not improper to recall to you that the question was carefully studied by the Institute of International Law some twenty years ago. In 1881 at the Wiesbaden session of the Commission which had been charged with the examination of the law of prize, Mr. BULMERINCQ presented draft regulations, the 55th article of which contemplated five cases in which a captor would be permitted to burn or to sink a prize. I shall take the liberty of quoting the text of this proposal:

The captor will be permitted to burn or to sink the seized vessel . . . in the following cases:

1. When it is not possible to keep the vessel afloat because of its unseaworthy condition, the sea being rough.
2. When the vessel's sailing ability is so poor that it cannot keep up with the war-ship and might easily be retaken by the enemy.
3. When the approach of a superior enemy force threatens the recapture of the seized vessel.
4. When the war-ship is unable to place a sufficiently large crew on board the seized vessel without too greatly diminishing the crew that is necessary for its own safety.
5. When the port to which the vessel might be taken is too far.

The Commission of Wiesbaden amended this text by inserting the word "enemy" between the word "seized" and the word "vessel," and by adding the following paragraph:

[903] In exceptional cases the captor is recognized as possessing this same right (the right of sinking) in the case of a condemnable vessel.

At its plenary meeting of September 15, 1882, at Turin, the Institute declared itself still more categorically with regard to the protection of neutrals. The addition of the word "enemy" was maintained, but on the proposal of Mr. DE MONTLUC the Assembly decided to omit the final paragraph of Article 55, as the majority considered the doctrine that a neutral vessel might be sunk without being condemned exorbitant. The word "enemy" was omitted from the final project, but Mr. DE MONTLUC pointed out the error to the Assembly at Heidelberg, and the word was again inserted in the text of Article 55, which was definitively drawn up as follows:

The captor will be permitted to burn or to sink the seized enemy vessel after having . . . etc. . . . in the following cases: (here follows the enumeration of the cases where sinking is permitted).

It clearly follows from what precedes that the Institute of International Law considered it unreasonable to sink a neutral prize, whatever might be the grounds for such an act.

It is to be noted that in the preamble to one of the proposals made on this subject, it is stated that it would be merely an act of justice to grant belligerents the right to sink neutral vessels, inasmuch as certain Powers are in a peculiar situation, since they lack ports and therefore would not know what to do with their prizes. That seems to me to be a very weak argument, which would not justify the tremendous injury which would undoubtedly be done to neutrals, if the proposal were adopted. The belligerent is considered as being at peace with the neutral State and, if he should find it impossible, either on account of his geographical situation or the insufficiency of his maritime resources, to exercise effectively the right of seizing neutral vessels carrying contraband of war or seeking to violate a blockade, he must leave them at liberty. That is the principle of the American, Japanese, and British proposals.

The adoption of a new principle giving belligerents the right to sink neutral prizes would inevitably lead to abuses and would expose every neutral vessel to the danger of being sunk whenever it met a belligerent war-ship, whose captain would not fail to exercise his right as he might see fit, in spite of the orders which he might have received to act with circumspection. A neutral vessel would therefore find itself in the same position as an enemy vessel; indeed, its position might be worse, since its Government would have no means of redress for the injury committed except by declaring war on the belligerent captor.

The British Government is therefore of the opinion that established practice does not permit the destruction of a neutral prize and consequently thinks that it is not at all desirable to modify in any way whatever this state of affairs.¹

His Excellency Sir ERNEST SATOW desires to add that in the opinion of the British delegation the exception mentioned in the amendment of the delegation of Japan² cannot be applied to the capture of a neutral vessel. The British proposal presupposes visit and capture, and it is to be applied only in cases where capture has taken place. Hence it is still of the opinion that the destruction of a neutral prize should continue to be prohibited.

His Excellency Count Tornielli thinks that the considerations set forth by the delegation of Russia might be satisfied, if it were laid down that neutral

¹ Annex 39.

² Annex 41.

prizes may be brought into neutral ports and left there in sequestration, pending the decision of the prize court. He proposes that this suggestion be recommended to the committee of examination.

[904] There would be a certain urgency in examining this suggestion, for in the committee of the Third Commission, second subcommission, the question of the entrance of prizes into neutral ports is being studied at this very moment.

His Excellency Sir **Ernest Satow** asks that the Commission vote on the following proposal: Does international law at present recognize the right to sink neutral vessels in case of *force majeure*?

The **President** believes that the Commission should first pass upon the amendment filed by the delegation of Japan.

His Excellency Lieutenant General Jonkheer **den Beer Poortugael** observes that if the Commission votes on the British¹ and the Japanese proposals, it discards by so doing the suggestion of his Excellency Count **TORNIELLI**. Personally, he prefers to join in this suggestion.

The **President** replies that it is for the Commission to take a stand in this respect; it must decide whether it wishes to vote or to refer the question to the committee of examination.

His Excellency Sir **Ernest Satow** insists upon a vote on the proposal as he has stated it. There is, as a matter of fact, no relationship between this proposal and his Excellency Count **TORNIELLI**'s suggestion. The former relates merely to the present state of the law, while the latter has in view the rule to be laid down for the future.

Mr. **Louis Renault** asks to be allowed to say a word as to the manner in which the question has been put. Given the form proposed by his Excellency Sir **ERNEST SATOW**, it is difficult to make a reply. It is not the Commission's rôle to pass upon the existing law, to settle its controversies, or to give consultations. It must discover rules to be laid down for the future. It must pass, not upon *lege lata*, but upon *lege ferenda*. If, however, such should not be the sentiment of the Commission, if it should wish to pass upon the existing law, the French delegation would abstain from voting.

His Excellency Sir **Ernest Satow** has no intention of opposing his authority in the matter of jurisprudence to that of Mr. **RENAULT**. If he put the question in this form, it was merely because he had in mind the wording of questions XI and XII of the *questionnaire*,² which seem to refer to the present state of law and practice. His Excellency Sir **ERNEST SATOW** does not wish to return to the reasons which prevented him from entering into details, because it does not appear to him possible to establish a rule which would not meet with unanimous acceptance on the part of the States. He has merely wished to do one thing: to establish the fact that the law does not at present permit the destruction of neutral prizes.

The **President** replies that in thus drawing up the articles of the *questionnaire* he had no intention of having them voted upon; he merely wished to give a certain direction to the debates. The object of the *questionnaire* is to have the Commission investigate what are the law and the practice at the present time, in order to make deductions for the future.

His Excellency Mr. **Tcharykow** thinks that the rôle of the Commission is

¹ Annex 39.

² Annex 1.

indeed to lay down rules for the future. He therefore falls in with the suggestions of his Excellency Count TORNIELLI and requests, in the name of the delegation of Russia, that no vote be taken until after the question has been discussed by the committee of examination.

His Excellency Mr. Choate would like to know, before voting on the Japanese proposal,¹ whether paragraph *a* coincides with paragraph *b* of Great Britain's proposal on the definition of an auxiliary vessel,² because if such were the case, it would make a difference in his vote.

[905] His Excellency Mr. Keiroku Tsudzuki replies that paragraph *a* of his proposal and paragraph *b* of the British proposal³ do not absolutely coincide; nevertheless it cannot be denied that in many cases the hypotheses might be the same.

His Excellency Mr. Choate remarks that the guarantees that are now given to neutrals would no longer exist and that certain neutral vessels would not be dependent on the decision of the prize court, but upon the arbitrary will of belligerent officers.

His Excellency Mr. Keiroku Tsudzuki replies that it is not the intention of the Japanese proposal to deprive neutral vessels of the guarantees of trials by prize courts.

The President, after dwelling upon the real nature of the *questionnaire* which has no other object than that of furnishing a basis for the work of the Commission and enabling it the better to prepare the rule to be laid down for the future, sums up the points of the discussion. The Commission is to decide whether it will adopt the suggestions of the delegation of Italy, or whether it wishes to vote forthwith on the British proposal, adopted by the United States of America and amended⁴ by Japan.

His Excellency Count Tornielli desires to call attention to the fact that the adoption of the suggestions which he has proposed would result in a suspension of the vote asked for by the delegations of Great Britain and the United States. He declares that if the vote takes place after the report of the committee of examination, the Italian delegation will take part therein; but if the vote is to be taken at once, it will abstain. He thinks that it would be better to wait until the committee of examination of the second subcommission of the Third Commission has settled the question of the stay of prizes in neutral ports before reaching a final decision.

The President states that the Commission is willing to follow his Excellency Count TORNIELLI's suggestion and consents to postpone its vote until the committees of examination of the two Commissions have reached an agreement on the text to be submitted.

The PRESIDENT then asks the Commission to pass on the *vœux* proposed by the French delegation.⁴ He recalls that these *vœux* were submitted to the Commission on July 19 last and that, on the motion of his Excellency Count TORNIELLI, the vote was postponed for two weeks. He observes, in this connection, that these *vœux* are not engagements that could be embodied in a convention.

His Excellency Count Tornielli declares that the first of the two considerations which inspired his Excellency Mr. LÉON BOURGEOIS' proposal concerning the

¹ Annex 41.

² Annex 2.

³ Annex 39.

⁴ Annex 16.

inviolability of enemy private property at sea finds the Italian delegation ready to support it. It accepts the principle that all private profit to the agents of the captor State should be eliminated.

But, on the other hand, his instructions do not allow him to accept the rule that losses incurred by individuals under the head of prizes should ultimately be borne by the State to which they belong.

The Italian delegation thinks that there would be certain dangers in adopting a system which would result in the State's insuring its subjects against [906] losses and damages suffered by them from acts of war, whether in naval or land warfare.

That is why the delegation of Italy asks that the two parts of the French proposal be put to vote separately, for it will vote in favor of the *vanu* that States which effect a capture shall abolish prize shares to the crews of the capturing vessels, and against the second part of this proposal.

His Excellency Baron **von Macchio** reads an explanatory statement concerning the amendment ¹ of the Austro-Hungarian delegation to the French *vanu*.²

The objections which the Austro-Hungarian delegation believes it should raise to the text of the *vanu* which we have before us and which we have been asked to vote for, objections that I have heard repeated in this honorable Assembly by some of our colleagues, bear upon two points:

1. That it is clearly a question of capture as a recognized right, a provision which from the point of view of logic and of principle would appear to be unacceptable to those of the Powers that have already declared themselves by their previous votes in favor of the abolition of such a right. Furthermore, adhesion to a *vanu*, which sets forth the *right* of capture as a right that exists and is not contested in international law, might in future prejudice the freedom of action of Powers which under more favorable conditions would like to try a further step forward toward the protection of enemy private property at sea in time of war.

Such are the objections which are covered by paragraphs *a* and *c* of the Austro-Hungarian amendment.

2. That acceptance of the French *vanu* in its present form would seem to imply a financial engagement by the Powers so broad and vague in scope that it would be difficult to subscribe thereto without reservation. That is an important point which, in our opinion, should not have this absolute character if the *vanu* is to be made acceptable to the delegations which might like to be relieved of such a responsibility.

That is the reasoning which led to paragraph *b* of the amendment.

After having thus specified the observations which it deemed necessary in order to make its point of view clear, the Austro-Hungarian delegation would be unable, if there should be a vote on the *vanu* in question, to vote in the affirmative except under the reservation that a formula should be adopted which would meet the two objections that have been set forth.

His Excellency Baron **Marschall von Bieberstein** states that he accepts, in the name of the German delegation, the first part of the *vanu* proposed by the French delegation; but as regards the second part he is of the opinion that the adoption and realization thereof would result in imposing upon the States expenses that it is impossible to foresee. It would have the further result of

¹ Annex 17.

² Annex 16.

encouraging to a certain extent many persons to attempt adventurous enterprises in the certainty that they would receive indemnities in case of failure.

Captain Behr says that in voting for the *vanu* proposed by the French delegation the delegation of Russia has the honor to declare that the Imperial Government would be disposed to abolish prize shares to the crews of the capturing vessels, on condition that all the other Powers do likewise. As for the [907] measures to be adopted in order that the losses caused by the exercise of the right of capture may not fall wholly upon the individuals whose goods are captured, the delegation of Russia considers that it must make reservations, in view of the encouragement which might be given to contraband trade.

His Excellency Mr. Choate desires to explain the reasons which have led the delegation of the United States of America to vote against the *vanu* proposed by the French delegation relative to the inviolability of enemy private property at sea. The delegation prefers to stand upon the votes received by its proposal, which seem to express the opinion of the majority of this Conference.

However, any progress toward the adoption of the principle of the immunity of enemy private property at sea in time of war has the delegation's entire sympathy.

The question of the abolition of prize shares contained in the French *vanu* is one of a purely national interest and the United States quite recently settled it, in so far as it is concerned, by a statute abolishing prize shares. It appears to the delegation of the United States that the *vanu* proposed by the French delegation will be of no avail and, although its intention is to relieve the owners of confiscated merchant ships by ultimately laying the losses incurred at the door of the States of which they are the subjects, it does nothing to protect commerce, but tends to increase rather than to diminish the chances of capture, when it is known that the losses will in the long run be borne by the State, and it will surely give rise to many and varied claims in every war, which must be settled on its conclusion through diplomatic channels or by the national courts.

The delegation of the United States is also of the opinion that the assumption by a belligerent State of the losses incurred by its merchants through the seizure of their vessels is a purely national question. This question must be settled by each country individually and not by treaty or contract between it and other States.

His Excellency Samad Khan Momtas-es-Saltaneh states that the delegation of Persia will vote with pleasure for the proposal made in the interest of justice and humanity by the French delegation,¹ with the reservation made by his Excellency Count TORNIELLI, and asks for a division of the question and of the vote.

His Excellency Sir Ernest Satow regrets that the British delegation can not support the *vanu* proposed by the French delegation in favor of the abolition of prize shares to the crews of the capturing vessels. The present practice, which is governed by our legislation, has certain advantages in the eyes of the British authorities, which they deem it wise to retain. Moreover, it is always lawful for the Government of any country to abolish on its own account this custom, which after all concerns only its own subjects, and it would therefore seem to be better to leave every country freedom of action in this respect.

As for the second part of the *vanu* proposed by the French delegation, he has the honor to announce that the British Government is the more inclined to support the proposal looking to the study of a system of national insurance

¹ Annex 16.

against the losses occasioned by the exercise of the right of capture, because the question is already being studied in England and the decision of the Commission charged with the examination of the question is expected at any moment. [908] His Excellency Mr. Lou Tseng-tsiang joins in the views expressed by the delegations of England and Germany. He will vote for the first part of the *vœu*, but is unable to accept the second.

Mr. Louis Renault states that the French delegation accepts the amendment of the Austrian delegation.¹ On the first point the amendment modifies only the wording and does not change the general sense. Moreover, it does not dispute the right of capture. As regards the second point, Mr. LOUIS RENAULT accepts the Austrian amendment with the following formula, which has the advantage of meeting the objections raised by his Excellency Sir ERNEST SATOW: . . . "will endeavor to discover a means of preventing . . . from falling entirely on the individuals . . ."

The French delegation accepts, moreover, a division of the vote.

His Excellency Mr. van den Heuvel regrets that the important discussion on the question of the inviolability of private property at sea did not result in a favorable and final solution. With a view to making a little progress, two proposals have been filed as a conclusion to the debate.

The first is the Belgian proposal,² whose object is to broaden the existing right, so far as the members of the crew of the captured vessel are concerned, and to ensure their liberation without distinction of nationality. His Excellency Mr. VAN DEN HEUVEL has the satisfaction to state that this proposal has received the approval of the British delegation and he expresses the hope that it will be unanimously adopted.

As for the second proposal, the French,³ it formulates *vœux* for reform. He pays tribute to the idea which dictated the amendments¹ of the Austro-Hungarian delegation, but regrets to say that in his opinion these amendments do nothing more than modify the form rather than the substance of the French proposal. The Belgian delegation has already made its sentiments known. It does not feel that it can adopt the *vœux* proposed, because they constitute, in its opinion, an encroachment upon national sovereignty and sanction the exorbitant right of confiscation.

His Excellency Mr. Ruy Barbosa recalls that to-day, at this very meeting, it has been stated as *res judicata* that the rôle of this Conference is limited to the laying down of rules for the conduct of States in their international relations. But in the French proposal it is not a question of establishing a rule, but simply of formulating a *vœu*.

In the second place, it is a question, in his mind, whether there is any use in expressing mere *vœux* in this Conference.

Thirdly, as matters of a purely material nature are involved, which scarcely concern domestic legislation, it seems to him that this field should be forbidden to the Conference.

Consequently the Brazilian delegation will abstain from voting, without implying by this attitude any opposition to the French proposal or even any decided opinion in the matter.

His Excellency Baron von Macchio notes with pleasure the declaration

¹ Annex 17.

² Annex 14.

³ Annex 16.

made by Mr. LOUIS RENAULT that he accepts the Austro-Hungarian amendment, and states, on his side, that he accepts the formula finally proposed by the delegate of France.

The President states that the Commission takes official note of the reservations which have been expressed.

His Excellency Réchid Bey shares the point of view of the Italian and

German delegations and states that the Ottoman delegation is ready to [909] adhere to the first part of the *væn* expressed by the French delegation.

Nevertheless it joins in the condition which the delegation of Russia has laid down with regard to the unanimous agreement of the Powers on the abolition of any private profit to the agents of the States which exercise the right of capture.

In conformity with the opinion expressed in the Commission and shared by the French delegation, the President will have two successive votes taken on the French *væux*. The Commission proceeds to vote on the first part of this *væn*, which has been amended by the Austro-Hungarian delegation and which the President reads.

Thirty-four delegations take part in the vote.

Yeas, 16: Germany, Austria-Hungary, Chile, China, France, Greece, Italy, Japan, Montenegro, Norway, Netherlands, Persia, Russia, Serbia, Sweden, and Turkey.

Nays, 4: United States of America, Argentine Republic, Cuba, and Mexico.

Not voting, 14: Belgium, Brazil, Denmark, Dominican Republic, Ecuador, Spain, Great Britain, Republic of Haiti, Panama, Paraguay, Portugal, Salvador, Siam, and Switzerland.

The Commission proceeds to vote on the second part of the French *væn* as amended by the Austro-Hungarian delegation:

Thirty-four delegations take part in the vote.

Yeas, 7: Austria-Hungary, France, Great Britain, Montenegro, Netherlands, Russia, and Serbia.

Nays, 13: Germany, United States of America, Argentine Republic, Chile, China, Cuba, Italy, Japan, Mexico, Norway, Persia, Sweden, and Turkey.

Not voting, 14: Belgium, Brazil, Denmark, Dominican Republic, Ecuador, Spain, Greece, Republic of Haiti, Panama, Paraguay, Portugal, Salvador, Siam, and Switzerland.

The President asks whether the Commission wishes to take up question XIII of the *questionnaire*¹ concerning the status of coastal fishing boats, or whether it desires to refer it to the committee of examination.

His Excellency Count Tornielli asks that vessels flying the flag of a belligerent Power, which are engaged in a purely scientific mission, be exempt from capture.

The delegation of Italy remarks that these vessels receive special treatment in certain countries. For instance, the laws of Italy state that the war-ships of a friendly Power, even though that Power should be a belligerent, may land or remain in the ports, roadsteads, or beaches of the kingdom without limitation

of time, provided the object of their mission is exclusively scientific.

[910] His Excellency Baron von Macchio announces that the Austro-Hungarian delegation has filed a proposal² tending to broaden the scope of the declaration anticipated by question XIII.

¹ Annex 1

² Annex 50.

Rear Admiral **Anton Haus** reads the proposal, which is worded as follows:

As is the case with coastal fishing boats, boats and barks engaged in the territorial waters of certain countries in the transportation of farm products or in small local business are exempt from capture.

Only in cases where military reasons require may the said boats and barks be requisitioned, in consideration of an indemnity, in conformity with the provisions in force respecting war on land.

This proposal refers only to boats and barks of small size, which are destined for the transportation of agricultural products or of passengers along rocky coasts or between the coast and islands situated in front of them, or in archipelagoes, or, finally, in the channels of flat coasts.

Without, on the one hand, doing any real harm to the commerce or resources of the enemy State, and without, on the other hand, being of any advantage worth considering to the captor, the capture of such vessels would only jeopardize the existence of sailors, islanders, or the inhabitants along the coast, all of whom are in a most precarious state of fortune, reduced as they are to the scant gains of their trade.

It would seem, therefore, to be in the interest of humanity to prohibit the capture of the boats and barks in question, except in case of military exigencies. But even in this last case, capture should be permitted only in consideration of an indemnity.

Humanitarian sentiments apart, the capture of these vessels is clearly illogical, if we consider such capture from the point of view of the principles governing war on land.

For if the coast is occupied by land forces, the boats and barks in question, being private property, are exempt from capture and can at most be requisitioned.

It would be difficult to find any valid reason for permitting naval forces that have occupied territorial waters to proceed, without deriving any benefit therefrom, to capture or to destroy these vessels.

Lieutenant Commander **Ivens Ferraz** reads the following proposal filed by the Portuguese delegation:¹

ARTICLE 1

The citizens or subjects of a belligerent State shall be permitted to carry on the industry of coastal fishing by means of apparatus or boats suitable for this purpose in the territorial waters and in the usual fishing zone on the coasts of the country to which they belong.

These boats may not, however, approach enemy war-ships or hinder in any manner whatever their tactical maneuvers or evolutions.

ARTICLE 2

Boats engaged in deep-sea fishing as well as those which may happen to be, except under special circumstances caused by the sea and the wind, outside of the zones mentioned in the preceding article, shall be considered enemy ships in all respects.

¹ Annex 49.

[1911]

ARTICLE 3

All fishing boats which, taking advantage of the immunities in Article 1, shall have entered into the service of a belligerent squadron and in that way shall have taken part in hostilities, shall be considered war-ships.

ARTICLE 4

When the outcome of an immediate military operation requires it, fishing boats may be detained by the enemy for a certain period of time.

His Excellency Mr. A. Beernaert asks that in taking up the question of coastal fishing the committee of examination define it and fix the distance beyond which it ceases to be coastal fishing. These are unknown quantities, which it is important to solve.

Mr. Choate takes the floor and speaks as follows in English:

I have the honor on behalf of the delegation of the United States of America to call the attention of the Fourth Commission, and also of the committee of examination to which this question shall be referred, to the decision of the Supreme Court of the United States in 1900 in the case of the fishing boat "Paquete Habana" reported in Volume 175 of the Reports of that Court at page 677, and the opinion delivered by Mr. Justice GRAY, one of the most eminent members of that Court and a recognized authority on all subjects of constitutional and international law. The opinion is too lengthy to quote at length, but a copy of it will be placed at the disposition of the committee.

In this case the Court, as stated in the syllabus of the opinion, held:

At the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed, and honestly pursuing their peaceful calling and bringing in fresh fish, are exempt from capture as prize of war. And this rule is one which prize courts, administering the law of nations, are bound to take judicial notice of, and to give effect to, in the absence of any treaty or other public act of their own government in relation to the matter.

The eminent Justice delivering the opinion quotes many authorities upon the subject and on page 708 says:

This review of the precedents and authorities on the subject appears to us abundantly to demonstrate that at the present day, by the general consent of the civilized nations of the world and independently of any express treaty or other public act, this is an established rule of international law, founded on considerations of humanity to a poor and industrious order of men, and of the mutual convenience of belligerent States.

It will be noted, however, that we only refer to this opinion as to its effect upon the innocent coast fishing vessels furnishing daily food supplies and not to fishing vessels of any other class.

In fact the learned Justice on page 708 says:

The exemption, of course, does not apply to coast fishermen or their vessels, if employed for a warlike purpose, or in such a way as to give aid or information to the enemy; nor when military or naval operations create a necessity to which all private interests must give way.

Nor has the exemption been extended to ships or vessels employed on the high sea in taking whales or seals, or cod or other fish which are not brought fresh to market, but are salted or otherwise cured and made a regular article of commerce.

[912] We call particular attention to this opinion as declaring that the rule laid down and applied is one of international law which, as stated by the Court, "prize courts administering the law of nations are bound to take judicial notice of and to give effect to in the absence of any public treaty or other public act of their own government in relation to the matter."

This opinion applied to a number of vessels and was given in a case in which the court of first instance had condemned a number of small fishing vessels engaged in furnishing the daily supply of fish for the home consumption of the city of Havana and which were owned by Spanish subjects and were therefore subject to prize if this class of fishing vessels came within the category of enemy vessels subject to capture.

The Supreme Court of the United States reversed the judgment of condemnation and restored the vessels together with compensation for their capture and detention.

The President states that the Commission takes official note of these different declarations, which will be taken into account by the committee of examination.

His Excellency Mr. Alberto d'Oliveira asks that Mr. IVENS FERRAZ be appointed a member of the committee of examination to defend the Portuguese proposal.¹

The President, having acceded to this request, states that there is no need at present for the Commission to take up question XIV of the *questionnaire*,² which is merely a question of drafting. The committees of examination will consider what provisions of the 1899 Convention are applicable to the operations of war at sea. They must give special attention to the question of submarine cables.

The Commission having completed the examination of the articles of the *questionnaire*, the President proposes that the committee of examination meet on Friday instead of the Commission, in order that the texts may next week be laid before the Commission in plenary meeting.

The meeting adjourns at 12:25 o'clock.

[913]

'Annex

HIS EXCELLENCY MR. JOSEPH CHOATE'S ADDRESS CONCERNING COASTAL FISHING BOATS.

[See *ante*, p. 902. In the official French edition of the *Actes et documents*, Mr. CHOATE's address appears in French on pages 911-912, and as an annex in English on page 913.]

¹ Annex 49.

² Annex 1.

[914]

THIRTEENTH MEETING

SEPTEMBER 18, 1907

His Excellency Mr. Martens presiding.

The meeting opens at 10:15 o'clock.

The **President** asks the Commission whether it has any remarks to make on the minutes of the twelfth meeting, which took place on August 7 last.

The minutes are adopted.

The **PRESIDENT** recalls that the Commission is to pass upon the work of the committee of examination. But before beginning the reading of the different reports, it is well to state that these reports are the balance sheets of the committee's work. When the committee has received the eighth report which is to be submitted to it, it can consider its labors ended. "When we separated on August 7 last," adds the President, "you directed the committee to codify the various principles of international law on naval warfare. It was said by some that the work of the Fourth Commission might be compared with that of the Second Commission of the 1899 Conference, which studied the rules to be observed in war on land. This is not, however, an absolutely accurate comparison. There are essential differences between the Second Commission of 1899 and the Fourth Commission of 1907 in the matter of the conditions of the execution of their tasks. In my capacity as President of the Second Commission of 1899, I can say that the task of your committee of examination was much more difficult by the very force of things. As regards war on land, there had been, from the time of EPAMINONDAS and of GUSTAVUS ADOLPHUS, ordinances, decrees, or regulations issued by the heads of armies. These regulations, whose object was to maintain discipline among the troops, constituted the first attempts at codification of the rules of international law concerning war on land. Such was not the case in the matter of naval warfare. The commanders of naval forces made no regulations and their great deeds, their bravery and their patriotism, of which their countries are justly proud, cannot be considered materials suitable for study in international conferences. They confined themselves to giving instructions, ordering their men to do what duty required of them, [915] and history will never forget the immortal words of the dying NELSON:

England expects that everyone will do his duty. There were, it is true, the decisions of judges in prize cases. Some of these judges, like Lord STOWELL, laid down a certain number of rules concerning international law. Nevertheless, although they were, so to speak, international judges, they also regarded themselves as the defenders of their countries' interests and they did not always consider questions from a more general point of view.

Therefore, the Fourth Commission had nothing on which to base its discussions, and that is the reason for the difficulties with which the committee of examination found itself confronted in the course of its labors. Your com-

mittee had before it proposals on the most burning questions of recent times, and nearly all these proposals were at variance with each other.

The Second Commission of the 1899 Conference was in an incomparably more fortunate position. It had as a basis for its work the Declaration on the laws and customs of war on land of the Brussels Conference of 1874. This instrument had been carefully prepared in 1873 by the Russian Government. A commission at St. Petersburg, under the presidency of the Minister of War, Count MILIOUTINE, and with the cooperation of the most eminent soldiers, such as Count TOTLEBEN and DRAGOMIROFF, drew up the draft convention, which the Brussels Conference subsequently changed into a Declaration. When the Fourth Commission separated at the beginning of August, it had received numerous proposals, but, as I have explained, these were in absolute contradiction with each other, so that it had before it empty ground, with the entire edifice to be constructed from the foundations up. It is not for me to sing the praises of the members of your committee; but I must mention a fact which I consider of the greatest moral importance. When we were confronted with great conflicting interests, resulting from a number of causes, I was able to note that we always joined in the same aspiration, the same desire—the seeking of a middle ground of agreement and conciliation. The more the diversity of interests made itself felt, the more manifest became the spirit of conciliation and of union. The greater the conflict of opinions and tendencies, the more evident became the aspiration of all the members of the committee toward the ideal of all jurisprudence and of all justice, which the Roman juriconsult expressed in the immortal maxim: *Suum unique*. It was because it was animated by this spirit that your committee was able to reach the result of which you are to-day the judges. We may venture to hope that it will be the same in future and that, when confronted with these same conflicting interests, we shall be animated by the same spirit of agreement and conciliation.

The various reports which you have before you are the faithful reproduction of the discussions which took place in your committee, and we owe them to the skill of Mr. FROMAGEOT. (*Loud applause.*) I am happy to note that we are agreed upon this point also.

You have received, gentlemen, the minutes of the meetings of your committee; you have likewise received the reports of the committee, and you have already had time to read them. Under these circumstances, I think that Mr. FROMAGEOT need not read you his reports, but merely the articles upon which the committee has agreed and upon which we can vote.

Mr. Fromageot (reporter) makes a preliminary remark. As the result of a material error the sentence “his name must figure on the list of officers of the fighting fleet” was omitted at the end of Article 3, as it appears in the [916] draft¹ annexed to the report on the conversion of merchant ships into war-ships.

Furthermore, the text of the draft on the status of the crews of enemy merchant ships captured by a belligerent² has not been inserted at the end of the report.³

¹ See text submitted to the Conference, vol. i, p. 266 [272]; see also the text elaborated by the committee of examination, annex 9.

² See text submitted to the Conference, vol. i, p. 268 [274]; see also the Fourth Commission, annex 48a.

³ See the report to the committee of examination, eleventh meeting, annex B; see also the report to the Conference, vol. i, p. 261 [267].

The **Reporter** then reads the regulations relative to the status of the crews of enemy merchant ships captured by a belligerent.

This text is unanimously adopted.¹

The Commission next passes to the discussion of the report² on the exemption from capture of coastal fishing boats and of certain other vessels in time of war.

His Excellency **Baron von Macchio** reads the following declaration:

The delegation of Austria-Hungary desires to state that in voting in the committee of examination against the omission of paragraphs 3 and 4 of the proposed provision,³ it had nothing else in mind than to emphasize the principle of the right of requisition and of indemnity, which formed a part of its proposal relative to coasting fishing. If, notwithstanding, it now votes for the proposed provision as a whole in the form which it subsequently assumed and which we have before us, it in nowise desires to renounce the aforesaid principles, but merely to show a conciliatory disposition to aid in bringing about the acceptance of a formula which, in the shape of a Convention, would establish a state of law in the place of the present state of fact.

His Excellency **Mr. Hammarskjöld** joins in the declaration made by his Excellency the delegate of Austria-Hungary.

His Excellency **Mr. Hagerup** observes, in connection with these declarations, that in his opinion the question whether these boats are subject to requisition remains an open question. But it would be manifestly inconsistent to exempt them from capture and subject them at the same time to requisition without indemnity.

The draft⁴ is adopted unanimously.⁵

The reporter reads the draft regulations on the conversion of merchant ships into war-ships.⁶

His Excellency **General Porter** takes the floor and speaks as follows:

It is evident that the principal object of the proposals incorporated in the [917] report of the committee of examination⁷ is to reiterate the Declaration of Paris relative to the abolition of privateering.

It is well known that the Government of the United States of America did not adhere to this Declaration solely for the reason that the Declaration failed to recognize the inviolability of enemy private property at sea.

That is why the proposals submitted present questions for the consideration only of the Powers signatory to the Declaration of Paris, and consequently our delegation must for the time being decline to participate in their discussion and abstain from taking part in the vote upon them. If, however, the Conference establishes by its action the inviolability of private property at sea, this delegation will be happy to vote for the abolition of privateering.

His Excellency **Vice Admiral Mehemed Pasha** declares that the Ottoman delegation cannot adhere to the project as a whole.

¹ For the adoption of the draft as a whole, see vol. i, p. 232 [236].

² See report to the committee of examination, eleventh meeting, annex A; see also the report to the Conference, vol. i, p. 263 [269].

³ Annex 57.

⁴ See the text submitted to the Conference, vol. i, p. 269 [275].

⁵ For the adoption of the draft as a whole, see vol. i, p. 232 [237].

⁶ See text submitted to the Conference, vol. i, p. 266 [272]; see also the text elaborated by the committee of examination, annex 9.

⁷ See report to the committee of examination, fifteenth session, annex B; see also report to the Conference, vol. i, p. 234 [239].

His Excellency Lord Reay reads the following declaration:

The definition of an auxiliary vessel submitted to the Conference by the British delegation had in mind hostile aid and a violation of the obligations of neutrals. The question of hostile aid, known also as "unneutral service," not having been studied and not appearing on the program of the Conference, we are of the opinion that its discussion would be premature and that it might be included in the program of a subsequent Conference, after having been carefully studied by the Governments represented at the Conference. I am authorized by my Government to withdraw the definition of an auxiliary vessel. Existing international law will be applicable to hostile aid.

The President puts the draft to vote:¹

Thirty-eight delegations take part therein.

Yeas, 32: Germany, Argentine Republic, Austria-Hungary, Belgium, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Spain, France, Great Britain, Greece, Italy, Japan, Mexico, Montenegro, Norway, Panama, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, and Switzerland.

Not voting, 6: United States of America, Brazil, Dominican Republic, Ecuador, Haiti, and Turkey.

The report² on the inviolability of private property at sea is approved unanimously.

The program calls for a discussion of the draft regulations concerning the status of enemy merchant ships on the outbreak of hostilities.³

His Excellency General Porter states that he reserves his vote because of lack of time to study the draft.

[918] Mr. Kriege reads the following declaration:

The German delegation makes reservations with regard to Article 3 and the second paragraph of Article 4 of the draft.

Before explaining the reasons for these reservations, allow me to make a few remarks of a general nature. It is not without regret that we have seen the elimination from the project of the provision proposed by the delegation of Russia, which tended to make an obligation of the favor which it has been the custom for half a century to grant merchant ships in the ports of the enemy on the outbreak of hostilities. We have been forced to resign ourselves to the purely optional character of the granting of this period of grace, in view of the fact that the Russian proposal cannot secure a unanimous vote. In these circumstances, the provision of Article 2, due to the initiative of the French delegation, by mitigating the rigorous measures to which, in the absence of an obligation, merchant ships might be exposed, is an advantage which we cannot overlook and which we have welcomed with satisfaction. It is only to be regretted that Article 5 places a powerful restraint upon it by authorizing belligerents to refuse the benefit of the provision of Article 2 to vessels whose build indicates that they are to be converted into war-ships. Nevertheless we have not hesitated to accept the provisions as a whole which relate to the treatment of vessels that happen to be in the ports of the enemy on the outbreak of war.

¹ For the adoption of the draft as a whole, see vol. i, p. 231 [235].

² See report to the committee of examination, annex to the minutes of the twelfth meeting of the committee of examination; see also report to the Conference, vol. i, p. 240 [245].

³ See text submitted to the Conference, vol. i, p. 267 [273].

This is not the case with the provisions of Article 3, as well as with the second paragraph of Article 4 concerning vessels which left their last port of departure before the outbreak of war and which are encountered at sea unaware of the existence of hostilities. It has been decided to apply to these vessels the same treatment as to vessels in port. To meet the objection that this would result in an inequality among the States, belligerents have been granted the right to destroy vessels, together with the privilege of seizing them and of keeping them in sequestration as long as the war lasts, on condition, however, that they indemnify the owner. But this does not remove the difficulty. As a matter of fact, only the Powers that possess naval stations in different quarters of the world can exercise the right of seizure in a regular manner. Other Powers, finding it impossible to bring vessels into port, will be reduced to destroying them and will therefore have to indemnify the interested parties for the losses sustained as the result of this action. To attain the same end, these Powers will therefore have to shoulder financial burdens which will not fall upon such other Powers as are in a position to take advantage of the right of seizure.

In consideration of this inequality, we cannot vote for Article 3 nor for the second paragraph of Article 4.

His Excellency Mr. **Tcharykow** states that the delegation of Russia joins in the observations of the German delegation with regard to Article 3 and paragraph 2 of Article 4.

The President calls for a vote:¹

Thirty-eight delegations take part therein.

Yeas, 35: Germany (under the reservation of Article 3 and paragraph 2 of Article 4), Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Spain, France, Great Britain, Greece, Italy, Japan, Mexico, Montenegro (under the reservation of Article 3 and paragraph 2 of Article 4), Norway, Panama, Paraguay, [1919] Netherlands, Peru, Persia, Portugal, Roumania, Russia (under the reservation of Article 3 and paragraph 2 of Article 4), Salvador, Siam, Sweden, Switzerland, Turkey, and Venezuela.

Not voting, 3: United States of America, Ecuador, and Haiti.

The President requests Jonkheer **VAN KARNEBEEK**, who was good enough to undertake the preparation of a preliminary report² on the laws and customs of war, to read the *vanu* which was unanimously approved in the committee of examination.

Jonkheer van Karnebeek reads the *vanu*, which is worded as follows:

The Commission requests the Conference to express the *vanu* that, pending the adoption of special regulations, the Powers apply, as far as possible, to war by sea the principles of the 1899 Convention relative to the laws and customs of war on land.

It would, in the Commission's opinion, be desirable that the preparation of special regulations should figure in the program of the next Conference.³

This *vanu* is adopted unanimously.⁴

¹ For the adoption of the draft as a whole, see vol. i, p. 232 [236].

² See report to the committee of examination, annex to the thirteenth meeting of the committee of examination; see also the report to the Conference, vol. i, p. 259 [264].

³ See text submitted to the Conference, vol. i, p. 269 [275].

⁴ For the adoption of the *vanu*, see vol. i, p. 233 [237].

The **President** puts to vote the report on the destruction of neutral prizes.¹ The Commission approves the report also unanimously.

The **PRESIDENT** recalls that the Commission's task is nearing completion.

All that remains for it to do is to pass upon the questions of contraband, the transportation of troops, and postal correspondence. The Commission will presently receive reports on these subjects.

His Excellency Count **Tornielli** requests that a report be made on the question of blockade.

The **President** accedes to this request.

The meeting adjourns at 11 o'clock.

¹ See report to the committee of examination, annex to the minutes of the sixteenth meeting of the committee of examination; see also the report to the Conference, vol. i, p. 257 [262].

[920]

FOURTEENTH MEETING

SEPTEMBER 26, 1907

His Excellency Mr. Martens presiding.

The President asks whether the Commission has any remarks to make with regard to the minutes of the thirteenth meeting.

His Excellency Mr. Tcharykow makes the following observations:

With regard to the minutes of the thirteenth meeting of this Commission, in which mention is made of the adoption of regulations concerning the crews of enemy merchant ships captured by a belligerent,¹ the delegation of Russia takes the liberty of submitting the following observations to this Commission:

The report² of our eminent colleague, Mr. Fromageot, establishes in principle that the crews of captured enemy vessels are not made prisoners of war, but it is necessary in certain cases to subject their liberty to certain conditions with a view to ensuring respect for the rights of the belligerent captor, in so far as is compatible with humanity.

In this connection, the delegation of Russia would like to state that in the cases contemplated by Articles 1 and 2 of the proposed regulations, the commanding officer of the captured vessel has the right to take such measures as are necessary to ensure order on board and safety in navigation.

The President asks whether the Commission has any objections to make to these observations of his Excellency Mr. Tcharykow.

The Commission makes no objections and adopts the minutes of the thirteenth meeting.

The President recalls that there are three questions which have not yet been examined by the Commission: contraband of war, blockade, and [921] the inviolability of postal correspondence. These three questions have been examined either by the committee of examination of the Fourth Commission or by the subcommittee specially charged with the study of contraband of war. It will not be necessary to read the reports thereon. The members of the Commission may, however, offer any observations that they feel they ought to make.

The report on contraband of war³ is adopted without comment.

As regards the report concerning blockade,⁴ Mr. Fromageot (reporter) states that, at the request of the Netherland delegation, the following words should be added at the end of the 5th paragraph of the said report: “. . . thus

¹ See text submitted to the Conference, vol. i, p. 268 [274]; see also Fourth Commission, annex 48a.

² See report to the committee of examination, annex B to the minutes of the eleventh meeting of the committee of examination; see also report to the Conference, vol. i, p. 261 [267].

³ See report to the Conference, vol. i, p. 250 [256].

⁴ See report to the Conference, vol. i, p. 255 [260].

excluding, in the opinion of the Netherland delegation, blockade of neutral territory. . . ."

The British delegation requests that the following words be inserted in the tenth paragraph of the said report:¹ " . . . the fact that in its opinion the question of blockade was not specifically included in the program of the Conference. . . ."

The report on blockade is adopted without any other modifications.

The Reporter reads the two articles² concerning the inviolability of postal correspondence³ and explains that, at the request of one of the delegations, the wording of Article 1 has been modified as follows:

In the first paragraph, instead of . . . *if the ship is detained, the correspondence is forwarded by the captor with the least possible delay except in the case of violation of a blockade, etc.*, read . . . *if the ship is detained, the correspondence is forwarded by the captor with the least possible delay. Exception is made in the case of violation of a blockade, if etc.*

Mr. Louis Renault does not approve of the latter wording. He desires to know what exception is taken.

Mr. Guido Fusinato would favor the omission of the last part of the first article, ending the article with the words, *except in the case of violation of a blockade*. It is preferable not to leave in the article words that might prejudice a solution upon which an agreement has not yet been reached, in the matter of blockade.

Mr. Louis Renault concurs in Mr. GUIDO FUSINATO's observation. The omission of the final words of the first paragraph of Article 1 avoids ambiguity and still leaves the fundamental principle of the article, which is that its provisions do not apply in case of the violation of a blockade.

Mr. Heinrich Lammasch is of Mr. GUIDO FUSINATO's opinion as to the omission of the concluding words of the first paragraph of Article 1, but he asks himself whether the drafting committee has the power to make this omission, which affects the substance of the article, and whether it would not be [922] better for the Commission itself to take action on this point. It would, at any rate, be necessary for the Commission to authorize the committee to make this omission.

Mr. Louis Renault understands Mr. HEINRICH LAMMASCH's scruples, but he thinks that, since the Commission raised no objection to the proposal, which was made before the vote, it thereby authorized the drafting committee to make the modifications considered necessary.

Mr. Heinrich Lammasch states that he does not insist, if this is the opinion of the Commission.

Mr. Kriege thinks that according to the Commission's vote the drafting committee is competent to make the modifications in question.

The President states that the Commission is agreed on the principle, and it is his opinion that the drafting committee should make such modifications in the text as it deems necessary.

His Excellency Lieutenant General Jonkheer den Beer Poortugael reads the following declaration:

¹ See vol. i, p. 256 [262].

² See annex 44.

³ See texts submitted to the Conference, vol. i, p. 268 [274].

The protection of postal correspondence at sea is a matter, for which I have been fighting for the past thirty years, in the Institute of International Law, as well as in my books concerning that law.

Not being a member of the committee of examination of our Commission, I have not yet had an opportunity to express my views upon the subject during this Conference. Nevertheless, seeing the great and increasing importance to so many private commercial interests that their correspondence should be unhampered, I proposed as early as 1888 in my book on international maritime law, page 558, that a neutral mail steamer shall be exempt from search, if it has on board a government official of the State whose flag the vessel flies, who shall declare in writing that the vessel carries no contraband of war.

If this view is accepted, we might add to the final sentence of Article 2 of the proposed arrangement:

There is no such necessity if a government official of the neutral State, whose flag the mail steamer flies, declares in writing that the vessel is not carrying contraband of war.

The **President** states that the minutes will mention the observations presented by his Excellency Lieutenant General Jonkheer DEN BEER POORTUGAEL.

The Commission proceeds to vote on the draft Convention concerning postal correspondence.

This draft is adopted¹ unanimously by those voting, except for the Italian delegation's reservation on the wording of paragraph 1 of Article 1 and the reservations of Montenegro and Russia on paragraph 2 of Article 1.

Not voting: Bolivia, Colombia, Luxemburg, Nicaragua, and Paraguay.

Before closing the work of the Fourth Commission, the **President** believes that he is interpreting its sentiments in extending its hearty thanks to the members of the committee of examination and of the subcommittee of examination [923] presided over by his Excellency Lord REAY. They have pointed out the way to the lofty goal toward which the Fourth Commission has been striving—namely, the codification of maritime law in time of war and in time of peace. (*Loud applause.*)

The **PRESIDENT** also heartily thanks two persons who have worked on the reports of the Fourth Commission, Mr. FROMAGEOT (*loud applause*) and Jonkheer VAN KARNEBEEK, who prepared a remarkable report on the laws and customs of war at sea.² (*Loud applause.*)

Finally, he must not forget those who were the mainstay of the Commission, the secretaries, who have displayed great zeal and have accomplished a vast amount of work. (*Loud applause.*)

His Excellency Count Tornielli takes the floor and speaks as follows:

Mr. **PRESIDENT**: I think I am voicing the sentiments of all our colleagues here assembled in addressing to you our most sincere compliments and our most hearty thanks. Thanks to your enlightened guidance, the Fourth Commission has accomplished a task of the utmost importance. Its work has resulted in a long step forward toward the codification of international maritime law in time of war. We have, in the regulations and arrangements which it has been possible to elaborate, a series of provisions of the greatest interest, and for the

¹ For the adoption of the draft as a whole, see vol. i, p. 232 [236].

² See report to the committee of examination, thirteenth meeting, annex A; see also report to the Conference, vol. i, p. 259 [264].

questions for which we have not succeeded in drawing up specific Conventions, we possess in the reports which we have just approved valuable materials, which will facilitate the work that will certainly be undertaken by our Governments in order to achieve as soon as possible the purpose which we have not yet been able fully to accomplish.

Our thanks are likewise extended to the eminent reporter, whose indefatigable activity has been the object of our continual admiration.

From your collaboration, gentlemen, we have obtained results of which we may rightly be proud.

The **President**, after having expressed his warmest thanks to his Excellency Count **TORNIELLI** and the members of the Commission for their kindly and flattering appreciation of his efforts to attain positive results, makes the following address:

GENTLEMEN: Permit me, before leaving the presidential chair, to tell you very frankly my most intimate and sincere thoughts on the scope of our Conference and on the future of the work of our Fourth Commission. The fate of the Conference and the future of the work of your Commission are indissolubly bound up with each other. When justice is done the Conference, justice will be done our Commission. When there is injustice and ingratitude to the one, there will be to the other.

Well, gentlemen, I think that people are unjust toward our Peace Conference. It is being attacked severely, without mercy and without pity, and I might add with the greatest injustice. Moreover, when I hear such attacks from the press and from the public, I always recall the German proverb, *Viel Feind, viel Ehre*. In other words, the more adversaries and enemies you have, the more honored and respected you will be.

We are all doing our duty by executing conscientiously the orders of our

Governments and by working with heart and soul on the great task, for [924] which the two great Peace Conferences have met. We must not descend to polemics against unjust and unfounded attacks. I shall merely take the liberty of bringing out an essential point, which is at the bottom of all these accusations and attacks.

We are accused every day of giving our attention only to the regulation of war on land and sea. It is said and repeated in every tongue and in every idiom that the Peace Conference is but a war Conference, and that nothing has been done here for peace, but everything for war.

If these reproaches are the expression of an ardent desire that the Conference do more in the sphere of arbitration, no one among us will refuse to acknowledge the just grounds for such a desire. But if this wish is to be made justification of the attacks upon the Conference, it appears to me rather unreasonable.

All these accusations can be explained, in my humble opinion, as a colossal misapprehension of the aim and scope of our Conference. It is said that, since it is called a Peace Conference, its purpose is the establishment of permanent peace among the nations.

Gentlemen, there is no Power in the world capable of establishing permanent peace; there has never been an international conference that seriously aspired to accomplish this object. The sole legitimate aim of our Peace Conferences is the following: to organize international life on the basis of law and justice.

That is their aim. If the Peace Conferences always labor for a better organization of international life, if they are able to introduce order where arbitrariness formerly reigned, if they bring about the triumph of right over arbitrariness and brute force, if they accomplish the ideal result of making nations and Governments bow conscientiously before justice and right, then, gentlemen, the Peace Conferences will have well defended the interests of peace and will indeed have deserved the gratitude of all mankind. That is why the regulation of the laws of war on land and sea is in the long run a splendid triumph for peace.

Indeed, if our laws of war oblige the belligerent to limit the exploits of brute force, if we have succeeded by means of our stipulations in arresting the hand of the strong invader, which was about to strike the inoffensive, peaceful inhabitant of occupied territory, if we have guaranteed humanitarian and kind treatment to the direct victims and prisoners of war, if we have protected the victims of naval warfare—fishermen, sailors, and merchant ships,—we have in all these cases been doing one thing, namely, proclaiming aloud respect for law, humanity, and peace. When we codified the laws of war on land or sea, we did so, not in order to glorify war and brute force, we wrote them in the name of the pity which is in the human heart, in the name of right which should guide our reason, and in the sacred name of peace which is the ideal of human aspirations. We say every day that force must be regulated not only by mercy and pity, but also by law and justice. All the stipulations of the First and of the Second Peace Conference relating to war on land or sea might be briefly summed up as follows: That there shall be a law for the victims of war and that the hand of peace shall be laid upon the passions of hatred and enmity even between belligerent nations.

If from the days of antiquity to our own time people have been repeating the Roman adage, "*Inter arma silent leges*," we have loudly proclaimed, "*Inter arma vivunt leges*." Our provisions do not assume bodily form and begin to live until war breaks out and while it lasts. This is the greatest triumph of law and justice over brute force and the necessities of war.

[925] The flag of the Peace Conference has become the symbol of protection to the unfortunate victims of war and of the splendid triumph of law and of humanity.

People, nevertheless, keep on saying that the Second Peace Conference has done very little in the four months during which it has been in session. In particular, it is said that the Fourth Commission has not added much to the codification of the law of naval warfare. It has succeeded in drawing up a bare score of articles.

Permit me to say, gentlemen, a few words of consolation on that subject. It is said that the Peace Conferences will become international legislative bodies or parliaments. Let us admit that and recall how often the chambers and parliaments of the various constitutional States waste whole sessions in bitter, barren wrangling. And yet they are cherished and pardoned. If people would take into account all the absolutely exceptional difficulties with which the Conference and your Fourth Commission have had to contend, they would surely be much more indulgent and just toward us. Your Fourth Commission has had to handle the most burning questions which the events of recent years have placed upon our program. On these questions there is practically nothing, either in literature or in conventional law. The Declaration of Paris of 1856 is the

only international instrument which sums up in its four articles the only attempt at codification of maritime law, with the object of mitigating the terrible consequences of war at sea. Aside from this instrument there is nothing. Now remember that the Declaration of Paris of 1856 is, properly speaking, merely a repetition of the principles of maritime law proclaimed by the Empress CATHERINE II in February 1780 as the basis of the armed neutrality. The Declaration of the Empress contained five articles; the Declaration of Paris has four. If you set aside the first article relating to the abolition of privateering, you must admit that in seventy-six years the Powers of the civilized world did not make very great progress in the regulation of naval warfare. With five articles in 1780, they reached four articles in 1856!

It is true that in the interval the question was several times brought up of establishing, by common agreement among the Powers, certain principles of the law of naval warfare; but the interests, the traditions, the aspirations, the systems of jurisprudence, the geographical position of the States are so conflicting and divergent that all attempts in this direction have always been unsuccessful.

At present I can say to you in all sincerity that while your committee of examination was at work, I despaired myself of its being able to reach an agreement. Nevertheless we have succeeded. We have submitted for your approval, not four or five, but twenty articles, and have prepared the way in our reports for future agreement on a series of further principles. We have succeeded in proclaiming the reign of law, of justice, and of peace in the domain where there has reigned up to the present time practically unlimited arbitrariness, or, to speak more politely, the "absolute necessities" of naval warfare.

If you ask me how this result has been brought about, I shall tell you squarely: only by the spirit of concord and the ardent desire of all to reach a compromise between the most conflicting interests imaginable. If we all deserve some credit for the elaboration of the approved drafts, it is only because of the conviction, which animates us all without exception, that the days of isolation and separation among nations have passed away forever, that the nations must make mutual concessions, and that only on this essential condition can the organization of our common international life become a great benefit to all without exception. That, gentlemen, is the fundamental principle of all [926] our work, and that is the keystone of the edifice of law and justice, whose foundations we have laid in this Commission. This principle will become hereafter the firm guarantee of international peace, and in leaving it as a heritage to our successors, we shall have insured the success of their efforts toward the ideal goal toward which we have ever striven.

We may now go our several ways, gentlemen and colleagues, with the conviction that we have labored to the full measure of our strength for a better and happier future. (*Loud applause.*)

The meeting adjourns at 5:30 o'clock.

FOURTH COMMISSION
COMMITTEE OF EXAMINATION

FIRST MEETING

AUGUST 3, 1907

His Excellency Mr. Martens presiding.

The President, in opening the meeting, recalls the mission of the committee and the object in view in the designation of the members thereof, who were appointed either in their capacity as members of the Bureau or the Fourth Commission, or as members of the committee:

Mr. KRIEGE (Germany).

Rear Admiral SPERRY (United States of America).

His Excellency Mr. LARRETA (Argentine Republic).

His Excellency Baron VON MACCHIO or Mr. HEINRICH LAMMASCH (Austria-Hungary).

His Excellency Mr. VAN DEN HEUVEL (Belgium).

His Excellency Mr. RUY BARBOSA (Brazil).

His Excellency Mr. MATTE (Chile).

Mr. LOUIS RENAULT (France).

His Excellency Sir ERNEST SATOW or his Excellency Lord REAY (Great Britain).

Mr. GUIDO FUSINATO (Italy).

His Excellency Mr. KEIROKU TSUDZUKI (Japan).

His Excellency Mr. HAGERUP (Norway).

Jonkheer VAN KARNEBEEK (Netherlands).

Captain BEHR (Russia).

His Excellency Mr. MILOVAN MILOVANOVITCH (Serbia).

His Excellency Mr. HAMMARSKJÖLD (Sweden).

Secretary: Mr. FROMAGEOT.

With regard to the privilege accorded members of the committee to be replaced by one of the members of their delegation, the PRESIDENT requests that the substitute be admitted by the committee.

[930] His Excellency Lord Reay asks that the substitute shall have the right to vote.

This request is officially noted.

The President proposes that the committee designate Mr. FROMAGEOT as reporter.

With regard to the division of the work, the PRESIDENT thinks that the question of contraband of war, being one most difficult of solution, might advantageously be examined by a subcommittee composed of Mr. KRIEGE, his Excellency Mr. RUY BARBOSA, Mr. LOUIS RENAULT, his Excellency Lord REAY, Rear Admiral SPERRY, and Captain BEHR.

The PRESIDENT informs the committee that it is to consider the question of

the conversion of war-ships into merchant ships [*sic*]. With a view to facilitating the discussion, he has prepared a draft Convention, but before taking up the examination thereof, it is necessary to pass upon the place where conversion may be effected. It is agreed that conversion may be effected in the waters of the belligerent or of his allies, as well as in ports actually under his authority; but that it may not be effected in neutral ports. The point that is still in doubt is whether a belligerent may effect the conversion on the high seas.

His Excellency Lord **Reay** cannot admit that conversion may be effected on the high seas.

Mr. **Guido Fusinato** is of the same opinion, except, however, as regards vessels which left their national ports before the outbreak of hostilities. We must have regard for their special situation. They may be in distant waters, and they cannot be forced to reenter one of their national ports in order to be converted therein. Again, they cannot be suspected of bad faith, of attempting to deceive neutrals as to their character, which accusation may be brought against vessels which leave their ports for the purpose of conversion on the high seas.¹

Captain **Behr** holds that conversion may be effected on the high seas. He cites the instance of a war-ship that captures an enemy merchant ship. The former must be allowed to convert the latter into a war-ship on the high seas and under the conditions required in such a case.

Mr. **Kriege** fully concurs in the opinion of Captain **BEHR**.

Jonkheer **van Karnebeek** states that in the opinion of the delegation of the Netherlands, the belligerent's right to convert a vessel on the high seas should not be recognized. It is a question of not reestablishing in a disguised form privateering, which was prohibited by the Declaration of 1856, and of protecting private property at sea, as far as the present legal system admits. It is necessary, therefore, to endeavor to limit the right of conversion. To this end conversion cannot be permitted except in national ports and the ports of allies.²

The **President** replies that the conditions under which conversion may be effected are such as to exclude any danger of this kind. He insists upon knowing the reasons in law and justice in support of the prohibition of conversion on the high seas.

His Excellency Mr. **Keiroku Tsudzuki** is of the opinion that, as a matter of fact, there is no logical reason for prohibiting conversion on the high [931] seas, but from the point of view of neutral interests there are practical difficulties which it is essential to take into account. He likewise believes that this prohibition should be extended to allied ports, first, because the term ally is not sufficiently specific, and, secondly, because conversion is an act of sovereignty and may not be effected except in places where an act of sovereignty may be performed. This is not the case as regards ports of allies, in which a belligerent merely receives hospitality.³

The **President** believes that it would be difficult to limit the right of sovereignty on the high seas and that neutrals would find a sufficient guarantee in the notice that could be given them.

Captain **Behr** thinks that it is indisputable that the facilities afforded for conversion will be an annoyance to neutrals, who will see the number of vessels

¹ See annex 4.

² See annex 5.

³ See annex 6.

that have the right of search increased thereby; but no rule can be laid down to limit the right which a belligerent has to increase his naval forces.

Mr. **Louis Renault** believes that the question is badly put and that the committee should endeavor to determine, not the places where conversion may be effected, but rather those where it may not be carried out. If we consult logic and the rules of law and justice, there is found to be only one place where conversion may not be effected and that is in neutral ports and waters, because conversion in those waters would be a violation of neutrality. But there is nothing to warrant the prohibition which it is desired to adopt with regard to others places, particularly allied ports, since the belligerent has a perfect right to institute a prize court on the territory of his ally. In so far as the high seas are concerned, international law permits conversion thereon; it is an act of sovereignty which there is nothing in law to forbid. We can subject this conversion to certain conditions, such as notice, the strict observance of naval regulations, etc.

His Excellency Mr. **Keiroku Tsudzuki** remarks that the manner of putting the question, as proposed by Mr. **LOUIS RENAULT**, would tend to prejudice the question of the conversion of war-ships into merchant ships on the high seas.

Mr. **Louis Renault** replies that there would be special force in this objection, if the American proposal¹ on the inviolability of private property at sea were adopted, since the war-ship might then have an interest in converting itself into a merchant ship in order to escape the risks of war; but aside from that case, we cannot see what interest a war-ship would have in such a conversion. What might be forbidden is reconversion as long as hostilities last.

The **President** believes that this is indeed a guarantee that can be given to neutrals.

His Excellency Baron **von Macchio** recalls that these are the reasons which inspired the Austro-Hungarian proposal.²

His Excellency Lord **Reay** replies that the sea is common to all and that consequently the Powers may prohibit thereon an act which may be an attack on their rights. The theory of freedom of conversion would result in the creation of hybrid vessels which, according to their interests, would assume this form or that, which might in the form of a merchant ship enter neutral ports and take on provisions therein, then reconvert themselves and commit acts of belligerency.

[932] The **President** recalls the affirmative reply made by Lord **GRANVILLE** in 1870 when the French Government consulted the British Government with respect to the legitimacy of the conversion of Prussian merchant ships into a volunteer fleet.

His Excellency Mr. **Hammarskjöld** is of the opinion that the view of the British delegation may be based upon reasons of a rather practical nature; conversion on the high seas might result in annoying consequences. It is admitted that conversion may not be effected in neutral ports, but it would be almost the same thing if a vessel, which is destined to be converted into a war-ship, should first enjoy the privileges accorded merchant ships—for example, the taking on of coal or provisions in neutrals ports—and then convert itself on the high seas.

¹ See annex 10.

² See Mr. **HEINRICH LAMMASCH**'s declaration at the second meeting of the Commission, *ante*, p. 747 [745]

His Excellency Mr. HAMMARSKJÖLD might accept the Italian proposal,¹ which seems to prevent the worst abuses; but he prefers that of Great Britain.²

The President proposes that the committee decide the question put in the following form: "Should the incontestable right of belligerent States to convert merchant ships into war-ships on the high seas be abolished, reserving of course all the conditions pertaining to such conversion?"

His Excellency Mr. Keiroku Tsudzuki asks that these conditions be first determined.

Mr. Louis Renault believes that it is absolutely necessary that so important a question be decided. It would be dangerous to peace to allow so serious a state of uncertainty to exist with regard to the rights of a belligerent. Neutral States may treat merchant ships converted otherwise than according to the adopted rules as pirates and apply criminal law to them. This would be a source of disputes which we must prevent.

Mr. Kriege is of the same opinion and adds that, if this question remains pending, the other conditions to be determined lose all their importance.

His Excellency Mr. Keiroku Tsudzuki criticizes the form in which the question is put, in that it passes judgment upon something that has existed up to the present time. The use of the word "abolished" would seem to imply that in the past the right of conversion on the high seas was an incontestably recognized rule.

His Excellency Lord Reay desires to remark that Great Britain has never considered the right of conversion on the high seas as an existing right.

Mr. Louis Renault replies that it is easy to put the question in a form that will not implicate the past.

The President is in a position to assert as a jurist that the right of conversion on the high seas has never been seriously contested. In so far as the committee is concerned, the main question upon which it has to pass is the right to mobilize merchant ships on the high seas.

His Excellency Mr. Augusto Matte proposes that the question be formulated thus: "Does the right of conversion on the high seas exist or not?"

His Excellency Mr. Hammarskjöld asks the committee not to pass upon the existence or non-existence of the right of conversion on the high seas, but to put the question in this way: "Should the right of conversion be granted . . .?"

[933] His Excellency Mr. Carlos Rodríguez Larreta believes that the question might be set aside, because he does not think that an agreement can be reached upon it.

Mr. Louis Renault proposes that the question be put in a more abstract manner and that it be formulated thus: "Is there occasion to lay down rules, according to which the belligerent may or may not convert merchant ships into war-ships on the high seas?"

Mr. Guido Fusinato requests that, in order to make the question easier to vote on, it be not put in an alternative form, but simply: "Is there occasion to lay down rules, according to which the belligerent may convert merchant ships into war-ships on the high seas?"

The President desires to state, before the vote, that no legal consideration

¹ Annex 4.

² Annex 2.

and no historical fact has been brought to the attention of the committee to prove that the right of belligerent States to effect conversion on the high seas does not exist at present.

The question being put as formulated by Mr. GUIDO FUSINATO, the committee proceeds to vote.

Yeas: Germany, Austria-Hungary, Argentine Republic, Chile, France, Russia, Serbia.

Nays: United States of America, Belgium, Brazil, Great Britain, Italy, Japan, Norway, Netherlands, Sweden.

The **President** states that this vote means that the old customary right continues.

Mr. Guido Fusinato requests that the question of the place of conversion be set aside and the other conditions discussed.

Mr. **Kriege** believes that under these circumstances it is useless to continue the discussion on conversion. His private opinion is that no practical result will be reached.

Jonkheer van Karnebeek asks whether it is agreed that conversion shall be prohibited in neutral ports?

His Excellency Lord **Reay** cannot admit the interpretation put upon the vote by the President, being of the opinion that the right does not exist.

His Excellency Mr. **Hammarskjöld** recommends to the committee that it examine the formalities pertaining to the conversion of merchant ships into war-ships. It will be very useful to establish conditions which will render a return to privateering impossible.

His Excellency Mr. **Ruy Barbosa** is among those who do not recognize the right of conversion on the high seas as an existing right, but in the face of the uncertainty on the subject in the committee, the decision of the question might be left to the Conference, and the committee might prepare a draft Convention based upon the hypothesis that the question has been decided in the affirmative. As for himself, he is ready to support an intermediate proposal.

The **President** does not see the use of passing now to the discussion of the time within which notice of conversion must be given neutrals.

[934] Mr. **Kriege** does not think it possible to fix the time limit by Convention.

It will suffice to say that notice shall be given with as little delay as possible. When conversion is effected on the high seas, the exact moment of its accomplishment, and consequently the starting point of the time limit, will not be known.

His Excellency Lord **Reay** replies that, if notification is admitted, it should be made before the converted vessel is put into service.

His Excellency Mr. **Milovan Milovanovitch** draws a distinction: conversion has taken place either in a national port, in which case notice to neutrals is not necessary, or on the high seas, when notice is necessary.

Captain **Behr** concurs in this opinion.

[1935]

SECOND MEETING

AUGUST 9, 1907

His Excellency Mr. **Martens** presiding.

In connection with the minutes of the last meeting, his Excellency Lord **Reay** desires to state the facts with regard to Lord **GRANVILLE**'s opinion therein mentioned. This opinion related to an ordinance of the King of Prussia concerning the establishment of a volunteer fleet, dated July 24, 1870. This ordinance contains the following provisions:

To issue a summons to all German seamen and ship-owners to place themselves and their forces and ships suitable thereto at the service of the Fatherland and under the following conditions: (a) the vessels to be placed at the disposition of the service will be examined and taxed by a commission composed of two naval officers and one naval contractor as to their capabilities for the intended purpose. In this case the owner receives one-tenth of the price taxed as deposit, whereupon he has to hire the necessary volunteer crews.

Other provisions follow, and the ordinance concludes as follows: "The authorities for all communications on the subject are those of: (a) the docks at Wilhelmshaven, Kiel and Dantzig; (b) the marine dépôts at Geestemünde and Stralsund; (c) the sea captain Weickmann at Hamburg."

A note of the Marquis of **LAVALETTE**, dated August 20, 1870, called the British Government's attention to this decree, with the remark that "maritime commerce is dismayed by this ordinance, and we are obliged to share these apprehensions which are warranted by the abnormal character of an institution that appears to be the reestablishment of privateering in a disguised form." The note sets forth the arguments in support of the assertion that "ships armed under the conditions laid down by the royal ordinance of July 24 are therefore real privateers, with the aggravated circumstance that the security or guarantee usually required is not required in their case."

Lord **GRANVILLE** replied on August 24 that the legal officers of the Crown were of the opinion "that there are . . . substantial distinctions between the proposed naval volunteer force sanctioned by the Prussian Government, and the system of privateering, which, under the designation of '*la course*,' the Declaration of Paris was intended to suppress. The law officers say that, as far

[1936] as they can judge, the vessels referred to in the notification of the 24th of July will be for all intents and purposes in the service of the Prussian Government, and the crews will be under the same discipline as the crews on board vessels belonging permanently to the Federal Navy. This being the case now, as long as it continues to be so, the law officers consider that Her

Majesty's Government cannot object to the decree of the Prussian Government as infringing the Declaration of Paris."

Consequently neither the Prussian royal decree nor the Marquis of LAVALETTE's note nor Lord GRANVILLE's reply touched upon the question of the conversion of merchant ships into war-ships on the high seas. The controversy revolved about the reestablishment of privateering, the character of the vessels of the volunteer auxiliary fleet, and not the place of conversion.

The President thanks his Excellency Lord REAY for this statement, which shows that Lord GRANVILLE recognized the right to create a volunteer fleet. It confirms the fact that there did not exist the slightest difficulty as to the *place* of conversion.

As the program for the day includes the discussion of days of grace, the PRESIDENT recalls to the committee that this question was the subject of a Russian proposal,¹ of a Netherland amendment,² of a French proposal,³ and of a Swedish proposal,⁴ which is a general conciliation. There is besides a proposal of Jonkheer VAN KARNEBEEK,⁵ which has just been filed.

Mr. Kriege asks that the committee pass upon the obligatory character of the period of grace, which is the basis of the Russian and the Netherland proposals, while the Swedish and French proposals do not recognize this obligatory character. The committee can then discuss the conditions upon which this period of grace shall depend. In so far as the German Government is concerned, it is ready to take the side of obligatory nature of the period of grace.

His Excellency Mr. Hammarskjöld is personally in favor of its being an obligation, but in making his proposal, he did so on the supposition that there would be no agreement on that point.

His Excellency Lord Reay declares that the Government of Great Britain does not admit that the period of grace is obligatory.

His Excellency Mr. Carlos Rodríguez Larreta states that his Government is opposed to the principle of obligation.

Mr. Heinrich Lammasch remarks that, if there is an obligation, the term "days of grace" might lead to a misinterpretation and that the new reading of the Russian proposal removes the possibility of any misunderstanding.

The committee proceeds to vote on the question whether days of grace constitute an obligation on the part of belligerent States.

Yeas: Germany, United States of America, Austria-Hungary, Belgium, Norway, Netherlands, Russia, Serbia.

Nays: Argentine Republic, France, Great Britain, Japan.

Not voting: Sweden.

[937] Jonkheer van Karnebeek explains that the proposal⁵ which he has just distributed among the members of the committee was suggested to him by the distinction between the right to leave and the right to days of grace. This distinction might be taken up again in the committee in view of the comments which Rear Admiral SPERRY's remarks suggested to his Excellency Mr. NELIDOW.

Mr. Kriege replies that he can see no occasion for Mr. VAN KARNEBEEK'S

¹ Annex 18.

² Annex 19.

³ Annex 20.

⁴ Annex 21.

⁵ Annex 22.

proposal unless days of grace are obligatory. In that case, he might accept it, on condition nevertheless that paragraph 3 be modified in such a way as to establish once for all the belligerent's obligation not to employ for military purposes vessels that are released by virtue of the proposed provision.

Jonkheer van Karnebeek recognizes the fact that, in view of the vote cast upon the obligatory character of days of grace, his proposal has no longer any point. Nevertheless he believes that the distinction between departure and days of grace ought not to be lost sight of.

The President believes that the Swedish proposal¹ could be used as a basis of discussion.

ARTICLE 1

In the event of a merchant ship of either of the belligerents being overtaken by war in a port of the other belligerent, it is desirable that the latter grant to this vessel days of grace, in order to allow it:

To complete its unloading, or the loading of goods which do not constitute contraband of war; and to leave the port freely and reach in safety the nearest port of its country of origin or a neutral port.

His Excellency Lord Reay states that he accepts Article 1, if the following words in its second paragraph are omitted: ". . . To complete its unloading, or the loading of goods which do not constitute contraband of war."

Mr. Hammarskjöld replies that since the period of grace is not obligatory, there would be no disadvantage in omitting these words.

Mr. de Beaufort remarks that under such conditions this article is merely a *vœu*.

Mr. Heinrich Lammasch asks that a few changes be made in the wording:

(1) Substitute the word "enemy" for the words "other belligerent."

(2) Substitute the words "sufficient period" for the words "days of grace," for it seems to him superfluous to insist upon the arbitrary character of the period.

Mr. Louis Renault and his Excellency Mr. Hammarskjöld see no difficulties in the way of accepting these two modifications.

Mr. Louis Renault remarks that, in view of the committee's vote, two courses may be followed:

(1) The States that have declared themselves in favor of the obligatory character of days of grace may make an agreement among themselves, but he asks himself whether it would be of any great practical use, when it is not accepted by certain great maritime Powers.

(2) It would seem to be better to take as the starting point the non-obligatory character of the period of grace and study the consequences thereof.

[938] Mr. Kriege thinks that the fate of the discussion depends upon the character of the negative vote: whether it is absolute or variable in its interpretations. If it is absolute, it would seem to be useless to continue the discussion.

The President thinks that the committee may disagree as to the principle, but may be able to reach an agreement on the conditions of execution.

Mr. Heinrich Lammasch asks that the committee vote separately upon each part of Article 1.

¹ Annex 21.

Jonkheer van Karnebeek considers that it would be advisable to make the neutral port mentioned in paragraph 2 of Article 1 more specific. Is it the nearest port or the first destination of the vessel?

His Excellency Mr. Hammarskjöld and Mr. Louis Renault reply that when there is no obligation the question is no longer of interest. The belligerent will give the enemy merchant ship a safe-conduct to this or that destination.

Jonkheer van Karnebeek remarks that the safe-conduct is not provided for in Article 1. This article establishes another system, according to which the neutral port cannot be understood in the sense of any neutral port. It would seem therefore that the question it brings up is not without interest. However, he does not insist, because he would not like to oppose Mr. LOUIS RENAULT'S broad and favorable interpretation.

On the invitation of the President the committee proceeds to vote on the omission of the words "to complete its unloading, or the loading of goods which do not constitute contraband of war."

The vote results in 5 yeas and 6 nays.

On the motion of his Excellency Mr. Hammarskjöld, the committee votes on Article 1 in its entirety, as modified by the Austrian and British amendments.

Article 1, worded as follows, is adopted:

In the event of a merchant ship of either of the belligerents being overtaken by war in the port of an enemy, it is desirable that the latter grant to this vessel a sufficient period, in order to allow it to leave the port freely and reach in safety the nearest port of its country of origin or a neutral port.

ARTICLE 2

A merchant ship which, owing to circumstances of *force majeure*, may not have been able to leave the enemy port during the days of grace above mentioned, or to which days of grace may not have been granted, may not be confiscated. It may, however, be detained, on account of the necessities of war, and it is then subject to requisition, in consideration of an indemnity, in conformity with the territorial laws in force.

Mr. Louis Renault explains that it is difficult to determine in advance the vessels that a belligerent can and those that he cannot allow to leave. Whether the belligerent detains a vessel or whether he grants it a certain period of grace, which, because of circumstances beyond its control, the vessel allows to lapse, it may not be confiscated, since in such a case it cannot be taxed with any fault.

His Excellency Mr. Keiroku Tsudzuki believes that it is difficult to draw a distinction between a war-ship or a ship carrying contraband and a vessel capable of being converted and consequently very dangerous.

[939] His Excellency Mr. Hammarskjöld replies that from a military point of view the belligerent's interests are safeguarded by the right to detain and requisition the vessels in question.

Mr. Louis Renault says that the belligerent may not only detain the ship but requisition it for his use. The interests of the belligerent and those of the owner are thus reconciled. His Excellency Mr. TSUDZUKI'S remarks would have the effect of giving a declaration of war a retroactive effect.

Mr. Fromageot (reporter) points out the fact that the assimilation of a detained vessel to a vessel carrying contraband of war is not correct. Trade in contraband is an infraction of the laws and duties of neutrals, and is there-

fore subject to a very severe penalty, while the presence of a merchant ship in an enemy port on the outbreak of hostilities is perfectly legitimate.

His Excellency Mr. Keiroku Tsudzuki replies that nevertheless goods in an enemy port when a declaration of war is made may be considered contraband of war and seized as such. The case is analogous.

The first paragraph of Article 2, thus worded, is adopted.

On the second paragraph of Article 2, Mr. Kriege remarks that in case of the requisitioning of a vessel by a belligerent State, the owner, who will receive at the end of the war only the indemnity provided by the territorial laws, will often find it insufficient compensation. Mr. KRIEGE proposes that the second half of the sentence, beginning with the words "and is then subject to requisition," be stricken out.

Mr. Louis Renault replies that it seems to him that it would be difficult to permit a State to detain a vessel without giving it the right to requisition it. If this right is recognized, it is indispensable that the principle of an indemnity be established, and the foreigner cannot complain because he is given the same treatment as nationals.

Mr. Kriege observes that three hypotheses might occur in practice: (1) the belligerent does not detain and consequently does not requisition the vessel; (2) he detains but does not requisition, and in this case is in a position to make restitution; (3) he detains and requisitions. In the last case restitution will often be impossible, and if the belligerent grants an indemnity according to the laws of his country, it is to be feared that this indemnity will very frequently be an illusory one. This may happen especially if the territorial legislature does not adopt the principle of requisition. That is why Mr. KRIEGE is in favor of abolishing the right of requisition.

Mr. Fromageot replies that he does not see how a difference could be established between requisitions on land and those at sea.

His Excellency Lord Reay believes that it is necessary to maintain the right of requisition. This very morning he listened to an eloquent speech by General VON GÜNDELL, in the name of the German delegation, who argued in favor of the right to requisition material belonging to railroad companies of neutral States which happens to be in the territory of one of the belligerents. It would seem therefore legitimate to apply this principle to an enemy vessel.

His Excellency Mr. van den Heuvel remarks that the Second Commission discussed the right of requisitioning neutral railroad material, while it is here a question of the right of requisitioning an enemy vessel. In his opinion, [940] neutral railroad material must not be seized, but the right of requisitioning enemy vessels that are within the jurisdiction of a belligerent may be admitted. At the end of the war, there will be a situation to be settled; the vessel will be restored, if possible, and in any event there will be an indemnity for the damage suffered. It would be desirable to stipulate that this indemnity shall be just and equitable, and to prevent any kind of arbitrary procedure or evaluation, which the territorial laws might prescribe with regard to their nationals. He therefore believes that under these circumstances it would be practicable to omit the last eight words of Article 2.

Mr. Louis Renault cannot concur in the opinion expressed by his Excellency Mr. VAN DEN HEUVEL. There are few countries that have no laws on requisitioning, and there are none that provide a nugatory indemnity for their

citizens. Moreover, it is difficult to admit better treatment to enemies than to nationals. As for the omission proposed by his Excellency Mr. VAN DEN HEUVEL, it will not be very far-reaching, for the principle of the application of domestic laws will remain the same.

Mr. Kriege expresses doubts as to the guarantees which all the territorial laws will be able to give, and he requests that the article conclude with a provision guaranteeing to the owner complete compensation for the loss incurred.

Mr. Heinrich Lammasch would consider a renunciation of the right of requisition an act of great self-denial and he is in favor of it, but in order to meet the objections of his Excellency Mr. VAN DEN HEUVEL and of Mr. KRIEGE, he proposes the following conclusion to Article 2: "subject to the obligation of restoring the vessel, if possible, and of indemnifying the owner for all loss."

Mr. Fromageot remarks that the article as now worded gives real guarantees to those concerned. As a matter of fact, if the requisitioning procedure which requires an inventory and an estimate of the articles requisitioned is applied, it will be possible to fix a much juster indemnity than if there is simply a requisition bond as the basis of evaluation.

Mr. Heinrich Lammasch believes that, if the basis of the indemnity is determined in the Convention, the situation of those concerned will be more favorable than if it is left to the domestic legislation of the States.

His Excellency Mr. Hagerup remarks that the 1899 Convention established uniform rules as to requisitions with the view of obtaining just indemnities. There is no reason why the same course should not be followed in the case before the committee.

The President proposes that the following form be used: "In conformity with the stipulations of the Hague Conventions on requisitions and the territorial laws in force."

His Excellency Mr. Hammarskjöld remarks that the case is not the same. When it is a question of indemnification for a vessel of the nationality of the belligerent, not only the depreciation in its value but also the freight revenue it has lost during hostilities must be included, while if it is a question of indemnification for a requisitioned enemy vessel, the freight revenue which it has lost must not be taken into account, since it is detained just the same. The assimilation which is being attempted is therefore incorrect.

Mr. Louis Renault replies that the 1899 Convention refers only to requisitions on occupied territory by the occupying Power, and not requisitions made by the belligerent on his own territory. As for his Excellency Mr. HAMMARSKJÖLD's observation, it seems to object to the French proposal, because it treats enemy vessels too favorably.

[941] His Excellency Mr. Hagerup replies that the cases are not identical but analogous.

His Excellency Mr. van den Heuvel is of the same opinion.

The President sums up the discussion under four heads:

- (1) Everyone admits the right to detain.
- (2) Everyone admits the right to requisition.
- (3) Everyone admits that there should be restitution, if possible.
- (4) Everyone admits that an indemnity must be paid.

Finally, the question is whether this indemnity is to be paid according to the French proposal or whether it is preferable to support the opinion of his Excellency Mr. VAN DEN HEUVEL, who asks that the concluding words of the article be omitted, or whether the form proposed by Mr. HEINRICH LAMMASCH should be adopted.

Mr. Louis Renault upholds the wording of Article 2.

After having stated that Mr. HEINRICH LAMMASCH's formula requires the application of the domestic laws, the President proposes that it be put to vote:

It is adopted by 9 votes to 2.

Article 2, worded as follows, is adopted by the committee:

A merchant ship, which, owing to circumstances of *force majeure*, may not have been able to leave the enemy port during the days of grace above mentioned, or to which days of grace may not have been granted, may not be confiscated.

It may, however, be detained, on account of the necessities of war, and it is then subject to requisition, under the obligation of restoring the vessel, if possible, and of indemnifying the owner for all loss.

THIRD MEETING

AUGUST 12, 1907

His Excellency Mr. **Martens** presiding.

The **President** requests that the committee postpone until the next meeting the adoption of the minutes, which have just been distributed.

Mr. **Guido Fusinato** and his Excellency Mr. **Ruy Barbosa** remark that since they received no call to the last meeting, they were unable to participate in the voting that took place.

The **President** invites the committee to continue the discussion on days of grace. Articles 1 and 2 of the Swedish proposal have been voted, but there was not time to discuss the proposal made by his Excellency Lord **REAY** to add to Article 2 paragraph 3 of **Jonkheer van Karnebeek's** proposal.¹

His Excellency Lord **Reay** requests that the following words be added: "Permission to leave and days of grace may be refused to enemy merchant ships designated or destined in advance to be converted into war-ships."

Mr. **Louis Renault** observes that this modification is entirely out of harmony with the spirit of the articles already voted. According to the committee's draft, a vessel can never have the right to leave. A provision could not prohibit departure and days of grace, unless under other circumstances such departure and days of grace were of an obligatory character.

Jonkheer van Karnebeek desires to state that in his project paragraph 3 was linked to paragraph 1, which was worded on the basis of such an obligatory character.

Mr. **Louis Renault** does not mean to criticize Mr. **van Karnebeek's** proposal, but merely the joining of paragraph 3 to the articles already voted by the committee.

His Excellency Mr. **Hammarskjöld** concurs, from a strictly legal point of view, in Mr. **RENAULT's** comment. He believes, however, that he sees the reason for the modification requested by his Excellency Lord **REAY**, which is that even the belligerent who admits a period of grace may nevertheless limit this provision to vessels that are not designated to be converted. The wording of the article might be modified so as to remove all appearance of contradiction. It would seem that Article 1 would be a better place for the addition proposed by Lord **REAY**.

[943] His Excellency Lord **Reay** desires the wording to be perfectly clear with regard to refusing permission to leave and a period of grace to vessels capable of conversion. He can see no objection to adding his amendment to Article 1.

The **President** asks whether it is the State in whose port the vessel is that is to be the judge of whether it may be detained or allowed to leave freely.

¹ Annex 22.

His Excellency Lord **Reay** answers in the affirmative.

Mr. **Louis Renault** thinks it would be difficult to mention these reservations in the draft Convention. They might appear in a report or in a statement of reasons.

His Excellency Mr. **Keiroku Tsudzuki** asks whether in case a period of grace is refused them, vessels capable of conversion are subject to confiscation.

Mr. **Fromageot** (reporter) replies that they are covered by the terms of Article 2; they are not confiscated but detained and are liable to requisition.

His Excellency Mr. **Keiroku Tsudzuki** states that under these conditions he makes reservations.

His Excellency Mr. **Milovan Milovanovitch** thinks that when a belligerent State may forbid the departure of enemy merchant ships that happen to be in its ports at the time of a declaration of war and if no special treatment is to be adopted for vessels detained because of their possible conversion, it is better not to mention them.

His Excellency Mr. **van den Heuvel** believes that his Excellency Lord **REAY**'s proposal intends that Article 1 shall state " . . . a merchant ship not designated to be converted into a war-ship . . . it is desirable that . . ."

Mr. **Louis Renault** says that under these conditions it will be necessary to have another vote and to combine it with the first in the wording of the article.

His Excellency Lord **Reay** concurs in the proposal of his Excellency Mr. **VAN DEN HEUVEL**.

The **President** requests that a new reading be proposed by his Excellency Lord **REAY**, so that it may be discussed at the next meeting.

The committee then passes to Article 3 of the Swedish proposal,¹ which the **PRESIDENT** reads:

ARTICLE 3

Merchant ships of belligerents, which are overtaken at sea by the outbreak of war, may not be captured if they have left their port of origin or another port before the outbreak of hostilities.

When military necessities require, these vessels may be detained and requisitioned.

After these vessels have touched at a port of their country or at a neutral port, they become subject to the laws and customs of naval warfare.

Mr. **Kriege** does not think he can accept this article. The committee has decided not to grant a period of grace to merchant ships in enemy ports. It has admitted the possibility of detaining and requisitioning them. This measure is always possible in the port itself, but for certain Powers that have no naval stations in all parts of the world it will be very difficult to carry it out on the high seas.

[944] His Excellency Mr. **Milovan Milovanovitch** requests that Article 3 be made to conform to Article 1 and that vessels encountered on the high seas unaware of the outbreak of hostilities be subjected to the same treatment as that provided in Article 1.

His Excellency Mr. **Keiroku Tsudzuki** concurs in Mr. **KRIEGE**'s opinion.

His Excellency Mr. **Hammarskjöld** remarks that the suppression of Article 3 would leave the belligerent the right to sink vessels encountered on the high seas unaware of the outbreak of hostilities. This right appears exorbitant, if it is believed that the vessel left port unaware of the outbreak of

¹ Annex 21.

war, without even having a suspicion thereof and without having been able to avoid the threatening misfortune.

Mr. KRIEGE replies that the right to sink the vessel is incontestable and that it is indispensable to the Power that has no means of detaining it. This right is indeed a very harsh one, but it is inseparable from the maintenance of the right of capture.

Mr. Guido Fusinato is of Mr. KRIEGE's opinion. It is certain that the right to sink is not questioned except as regards neutral vessels. Moreover the right of capture is not founded upon a fault on the part of the vessel, but is considered a means of defense.

His Excellency Mr. Hammarskjöld does not intend to dispute the right to sink the captured vessel, but he wishes to make it clear that in claiming the right to capture the vessels in question, it is the right to sink them that is contemplated.

Mr. Louis Renault fears that the opponents of the right of capture desire to push the system to excess in order to prove the correctness of their opinion. It is possible to favor the right of capture, and yet to wish to temper its severities in certain respects. The committee has not admitted the right of confiscation of enemy merchant ships taken unawares in the ports of the belligerent. It cannot be denied that the situation of the merchant ship on the high seas is still more favorable.

Mr. Kriege maintains his opinion. He remarks that it is in harmony with theory and practice, which have generally allowed a period of grace to vessels in port but not to those on the high seas.

Rear Admiral Sperry points out that the refusal of days of grace will cause great injury to commerce, which will remain paralyzed during the period of tension for fear of having its vessels captured. The assurance of obtaining days of grace would, on the contrary, leave it entire freedom of action up to the last minute, and for these reasons, in the common interest of belligerents, an exception has been made to the ancient right of capture in the case of vessels in port.

Mr. Guido Fusinato is of the opinion that vessels on the high seas should be assured the same treatment as those in port.

His Excellency Mr. Milovan Milovanovitch proposes, in order to meet Mr. KRIEGE's views, that a distinction be drawn between vessels capable of conversion and those that are not, that the former be subject to the right of capture and that the latter be left free.

Mr. Kriege points out the difficulty that the making of this distinction would involve.

His Excellency Mr. Keiroku Tsudzuki concurs in this request.

Mr. Guido Fusinato asks that vessels on the high seas and those in port receive the same treatment.

[945] Mr. Fromageot points out the excessive right that will result from the suppression of Article 3. It is indeed neither just nor lawful to sink a vessel which had a right to count on peace, which set sail and is pursuing its course in full confidence, unaware of the existence of war. It would be very difficult, on the other hand, to allow this vessel entire freedom, especially if it is carrying contraband of war. Mr. FUSINATO's proposal that the vessel in port be assured the same treatment as the vessel at sea would appear to be most

in harmony with justice; it does not inflict an unjust loss upon the owner and it safeguards the right of the belligerent. Again, the difference between the vessel that can be used in time of war and the vessel that cannot is very difficult to establish. We might, therefore, refer to Article 1 and say "shall be treated as stated above."

His Excellency Mr. **Milovan Milovanovitch** says that the suggestion was inspired by the modifications which it is desired to introduce in Article 1.

Mr. **Kriege** thinks that the loss incurred by the owner, who will receive an indemnity, will very rarely be covered by the indemnity. On the other hand, the objection based upon contraband of war is answered by the system followed in the matter of contraband, which is the subject of a special examination.

His Excellency Lord **Reay** accepts the German point of view, as set forth by Mr. **KRIEGE**.

Rear Admiral **Sperry** recalls that the United States, which filed a proposal¹ relative to the inviolability of private property, has rejected all half measures presented on this subject. But Article 3 pertains to the question of contraband. In the American proposal the necessity of maintaining the notions of contraband and blockade was recognized. Without special instructions he cannot therefore vote for this text.

Mr. **Fromageot**: Articles 1 and 3 do not refer to "goods." Besides, these goods are, under the hypothesis, *loaded* before there is a state of war. We cannot therefore speak of contraband.

Addressing Mr. **KRIEGE**, he asks him whether a period of grace has not at times been granted to vessels encountered on the high seas. It seems to him—and in case he should be mistaken, he would ask Rear Admiral **SPERRY** to correct his assertion—that during the Spanish-American war the American Admiralty fixed this period at thirty days.

Rear Admiral **Sperry** replies that the proclamation of the President of the United States, dated April 25, 1898, at the time of the war with Spain, referred only to vessels bound for ports in the United States.

Mr. **Kriege** thinks that the practice of granting such a period is not so general as the speaker seems to imply.

Rear Admiral **Sperry** says that the offense of carrying conditional contraband cannot exist until after notice has been given to neutrals, according to the proposal of the delegation of the United States.² It is evident, however, that before such notice has been given, the belligerent may prevent the escape of absolute contraband of war, such as mines and munitions.

The President: We must set aside the question of contraband, which we shall take up later. For the time being we are to vote on the principle of the period to be granted or not to be granted to vessels encountered at sea, as presented by the Russian³ and the French⁴ delegations, and as set forth in [946] Article 3 of the amendment of the delegation of Sweden.⁵ Those in favor of this period of grace will vote Yes, that is to say, for the preservation of Article 3; those opposed will vote No, that is to say, for its omission.

¹ Annex 10.

² Annex 31.

³ Annex 18.

⁴ Annex 20.

⁵ Annex 21.

The question being thus put, the committee proceeds to vote, with the following results: 6 yeas; 6 nays; 3 not voting.

Voting against the preservation of the article: Germany, Great Britain, United States of America, Argentine Republic, Austria-Hungary, Japan.

Voting for its preservation: Belgium, Brazil, France, Netherlands, Russia, Sweden.

Not voting: Italy, Norway.

Mr. Guido Fusinato desires to state the reason for his vote. He did not wish to subject vessels encountered on the high seas to more rigorous treatment than that received by vessels in enemy ports. On the other hand, he did not want to preserve Article 3, as Mr. KRIEGE's comments seem to him exceedingly just. What he would like is equality of treatment.

The President requests Mr. FUSINATO to make a proposal, which will be voted upon without discussion together with that to be submitted by the British delegation¹ with reference to Article 2.

The PRESIDENT reads Article 4 of the Swedish amendment.² He remarks that in case Article 3 is omitted, this text will have no relation to Articles 1 and 2.

ARTICLE 4

If any of the above-mentioned vessels put into an enemy port, they shall enjoy the periods of grace and immunities indicated in the foregoing article.

Mr. Kriege deems it advisable to discuss now the fate of the cargo.

Mr. Fromageot (reporter): The cargo should be considered as separate and distinct from the vessel, both in the interest of the owner and of the belligerent. Not having been loaded in violation of a duty of neutrality, it cannot be considered contraband. It must therefore be given a legal status analogous to that given the vessels. To this end he asks that the following sentence be added to Article 1: "The cargo, like the vessel, shall be subject to seizure and requisition."

Mr. Kriege says that a provision concerning the fate of the cargo had better be the subject of a separate article.

Jonkheer van Karnebeek asks, with regard to the amendment made by the British delegation,¹ whether he may take advantage of this opportunity to return to the first two articles and submit some proposals which he has already drafted respecting them.

The President remarks that these articles have already been discussed.

[947] Jonkheer van Karnebeek says that it is not the purpose of the proposals he desires to present to affect points already settled nor to modify the wording. They touch upon the substance itself and were inspired by the desire to protect these articles as adopted from certain well-founded criticisms which might be made regarding them.

The President: It is too late to offer new proposals on these texts. But if Mr. VAN KARNEBEEK wishes to explain what he has in mind, his remarks will appear in the minutes.

Jonkheer van Karnebeek thanks the PRESIDENT and will be satisfied, for the time being, with a mere indication of the points he has in mind.

¹ Annex 27.

² Annex 21.

According to Article 1, "a sufficient period" may be granted a merchant ship to allow it "to leave the port freely." That does not seem to be logical. There are three distinct points to be considered: (1) The departure, properly so called, which can be conceived of without any period of grace and respecting which the question arises likewise whether it shall be allowed as an obligation or merely as a favor; (2) the period of grace, which is bound up with the question of loading and unloading; (3) finally, the situation in which the vessel would find itself, if it were neither allowed to depart freely nor granted a period of grace, such a case being contemplated by Article 2.

If this distinction is well-founded, a "sufficient period" in which to leave freely is an anomaly, proceeding from a confusion of ideas. It therefore seems to be necessary to rectify the text so as to remove the anomaly on the one hand, and on the other hand to show clearly the distinction indicated above between immediate departure and departure after a period of grace.

He points out in the second place that it appears from the deliberations of the Commission that we are confronted with two essentially different conceptions of days of grace. According to the first, days of grace include *both* the stay in port and the voyage to the port for which the vessel set sail upon leaving. This system is the basis of the proposal of the delegation of Russia and has been explained by Colonel OVTCHINNIKOW.¹

The second system limits days of grace to the stay in port. On leaving port the vessel will be furnished with a pass which will permit it to go directly to an indicated destination without danger. This latter system has likewise been put into operation during the past century. Mr. VAN KARNEBEEK points out that neither the Commission nor the committee has declared itself on these two systems. It is his opinion, however, that they ought first to choose between the two.

The President: This is a question of principle which cannot be brought up now.

Jonkheer van Karnebeek remarks that the question is connected with the text which has been adopted. Having asked at a previous meeting what was to be understood by the term "neutral port," he received the reply "any neutral port." He would be the last to object to such an interpretation.

But why, then, the restriction of the nearest port where a national port is concerned? Mr. VAN KARNEBEEK considers this illogical and he sees in it a consequence of the confusion of the two aforesaid systems between which a distinction has been drawn. The nearest national port belongs to the first conception; any neutral port to the second.

The President: These observations will appear in the minutes.

Jonkheer van Karnebeek, pointing out that what he has just said applies equally to Article 2, would like, in order to make his remarks complete, to call attention to two questions which arise in connection with this article as adopted.

[948] (1) Is the obligation of indemnification for all losses applicable likewise to the case of detention pure and simple, when there is no requisitioning? The wording adopted might lead to the belief that it is.

(2) In fixing the indemnity to be paid to the owner, will the fact that he has been deprived of the use of the vessel be taken into account? This does not

¹ Annex 18.

seem to follow from the discussions at the last meeting. The wording should therefore be modified and should contain a reservation on this subject.

The **President** lays out the program for the next meeting. A vote will be taken on the British proposal concerning days of grace, and the committee will then pass to a discussion of the texts relative to the situation of the crews of captured neutral vessels, and to the question of blockades.

Mr. **Kriege** requests that the subject of postal inviolability be reserved for the committee now charged with the question of contraband.

It is decided that this shall be done.

The meeting adjourns at 5 o'clock.

[949]

FOURTH MEETING

AUGUST 14, 1907

His Excellency Mr. **Martens** presiding.

His Excellency Lord **Reay** makes the following comments on the minutes of the second meeting of the committee:

The second proof of the minutes of the second meeting of the committee of examination¹ contains a remark by the **PRESIDENT**, which might give rise to a misapprehension. In alluding to my communication he says: "It confirms the fact that there did not exist the slightest difficulty as to the *place* of conversion." Lord **GRANVILLE**, not having been consulted on the place of conversion, did not set forth his ideas on the subject, and it seems to me improper to draw the conclusion from his silence on the matter that Lord **GRANVILLE** would have accepted conversion on the high seas, which could not have been in question in 1870 and which is the only question that presented difficulties in the Fourth Commission and is the subject of our discussion.

The **President** says that his Excellency Lord **REAY**'s remarks confirm the fact that the question of the place of conversion was not touched upon in the above-mentioned diplomatic correspondence.

At the request of Mr. **Kriege**, the adoption of the minutes of the third meeting is postponed to the next meeting.

The program calls for the resumption of the discussion on the question of days of grace.

The **President** informs the committee that Mr. **FROMAGEOT** has undertaken the preparation of a revised draft.² Article 1 takes into account the amendments of the British and Belgian delegations; Article 3 reproduces Mr. **FUSINATO**'s proposal; finally, there is a new Article 4 which covers the fate of the cargo.

Mr. **Fromageot** (reporter) points out the provisional character of his draft. He explains that the words in the second line of Article 1 meet the desires expressed by Great Britain and Belgium; the concluding words cover what Mr. **VAN KARNEBEEK** had in mind; finally, Article 3 provides, in conformity with the compromise proposal of Mr. **FROMAGEOT**, the same treatment as that accorded vessels taken unaware in port to vessels encountered on the high seas unaware of the existence of war.

[950] Mr. **Guido Fusinato** would prefer to use the word "*confiscated*" instead of the word "*captured*" in Article 3.

The **President** reads the new proposal of the British delegation,³ which is to be Article 5, worded as follows:

¹ See *ante*, p. 925 [936].

² Annex 23.

³ Annex 24.

These provisions shall not be applicable to enemy merchant ships designed in advance for conversion into war-ships.

His Excellency Mr. **Hammarskjöld** remarks that the preservation of the wording of Article 1 depends upon the adoption of Article 5. He would prefer to reserve for the end of the draft the article concerning vessels capable of conversion. Moreover, the original wording of the Russian proposal seems to him preferable. It is indeed difficult to tell what the new wording will give rise to, to know what will be the fate of the vessel permitted to leave without being granted days of grace or receiving a "pass." May it be captured?

Mr. **Louis Renault** states that he does not very well understand the additional article proposed by Great Britain. It is conceivable only if the draft makes the granting of days of grace obligatory, but there is no reason for it, if it is added to a rule which leaves the belligerent entirely free on this point. The English proposal literally applied would result in doing away with provisions, where a certain class of vessels is concerned, which aim to mitigate in a measure the severity of the right of confiscation.

His Excellency Lord **Reay** replies that as regards vessels designated in advance for conversion, Great Britain intends to maintain the existing right of confiscation. Moreover, if Article 5 is adopted, he sees no disadvantage in omitting from Article 1 the phrase "and not designated in advance for conversion into war-ships."

His Excellency Mr. **Keiroku Tsudzuki** supports the British proposal.

Mr. **de Beaufort** would prefer to have Article 5 refer only to Articles 2, 3, and 4, and to make no allusion to Article 1. Since Article 1 expresses a *vœu*, Article 5, by referring to it, would imply that "it is not desirable." It is not the rôle of the Conference to express such a *vœu*.

The **President** desires to have it clearly established that the sovereign judge of this designation shall be the belligerent State in whose port the merchant ship happens to be.

His Excellency Lord **Reay** says that such is the opinion of Great Britain, subject to a subsequent decision by a prize court, and that according to his proposal the law applicable to vessels designated for conversion—that is to say, vessels designated to be taken into the service of the State—is existing international law.

Mr. **Louis Renault** remarks that all vessels are capable of being used in time of war.

His Excellency Lord **Reay** replies that it is only a question of such vessels as are designated in advance to be converted into war-ships.

Mr. **Louis Renault** insists upon the equivocal nature of this designation.

His Excellency Lord **Reay** says that there are countries which publish lists, but there are others which do not, so that such publication cannot be considered one of the conditions of conversion. It would be very difficult to make the exception more precise.

[1951] Mr. **Fromageot** explains that there are countries which publish lists of auxiliary vessels, which lists are, however, not accurate; others grant subsidies, but these subsidies also are often merely compensation for the obligation to assure postal service, and not for keeping the vessel ready for naval service; finally, in other countries all vessels are liable to be requisitioned and subsequently to be converted into war-ships.

Captain **Ottley** mentions five vessels of the merchant marine of Great Britain, which are designated in advance for naval purposes. Two of these vessels belong to the Cunard Company. He adds that Captain **BEHR** can no doubt name such vessels in the Russian merchant marine.

Captain **Behr** does not deny this, but points out that Article 5 gives belligerents too much latitude.

Mr. **Kriege** thinks that the provision in Article 5 is not sufficiently clear. It is difficult to discover the vessels that are designated in advance for naval use and what the intentions of the belligerent are on this point.

His Excellency Mr. **Keiroku Tsudzuki** remarks that there may be cases which will give rise to doubt, but there are others which will be perfectly clear. As regards this entire class of vessels, Japan prefers to remain *in statu quo*.

His Excellency Mr. **Hammarskjöld** thinks that in doubtful cases only the right of detention and requisition may be exercised. He asks himself whether to the mind of the British delegation the designation ought not to be proved by the existence of a contract or quasi-contract between the State and the owner of the vessel. In any event it would be desirable to have this idea set forth in the text.

Mr. **Kriege** considers that it would be too difficult to draw up a provision in this sense. As a general thing these contracts are not made public.

His Excellency Mr. **Keiroku Tsudzuki** states that as regards vessels receiving subsidies to be used for military purposes in time of war, the period of grace should never be anything but optional.

Jonkheer **van Karnebeek** recalls that the expression "designated in advance" appeared first in the proposal¹ which he filed at the preceding meeting. He therefore desires to explain what he figured the situation to be. It is a question of doubtful cases. In such cases the State to which the vessel belongs might bind itself not to effect conversion. The right of detention would therefore be exercised in the first instance, to be followed by confiscation if the engagement were not made. He believes that in this way the interests of the two belligerents might be equally safeguarded.

Captain **Behr** points out that the real effect of Article 5 will be to make all the rules of the Convention inoperative, so far as vessels capable of conversion are concerned.

His Excellency Lord **Reay** remarks that the term he used is that employed in the Netherland proposal. It seems to him that the words "designated in advance" give sufficient guarantees.

Mr. **de Beaufort** replies that the engagement entered into by the State not to make use of the vessels was the condition joined to and the restriction placed upon the provisions of his project.

[952] Mr. **Kriege** shows that the only question involved is that of an indemnity; the right of detention and of requisition leaves no reason for the distinction between vessels capable and those incapable of conversion.

Mr. **Guido Fusinato** inquires whether the restriction in Article 1 applies likewise to Articles 2 and 3. If it does, the solution reached would be the opposite of that proposed.

Mr. **Fromageot** is not personally in favor of the restriction contained in Article 1, but like Mr. **FUSINATO** is of the opinion that it bears only upon this article.

¹ Annex 22.

Mr. Louis Renault says that the British proposal is very simple; its object is to preserve confiscation as regards vessels capable of conversion.

Captain Ottley says that vessels of high speed and of stronger build are those that are rather designated for conversion and in practice receive a different kind of pass from that given vessels of lower speed.

His Excellency Mr. Keiroku Tsudzuki points out that a vessel capable of conversion will convert itself after leaving port and will then exercise its right of search and of capture. That is why he intends to reserve freedom of action, in so far as vessels of this kind are concerned.

Mr. Louis Renault replies that the right of detention and of requisition gives full guarantee to belligerents.

His Excellency Lord Reay declares that vessels built with a view to war cannot escape the treatment to which war-ships are subjected.

His Excellency Mr. Keiroku Tsudzuki says that belligerents cannot logically be refused the right of confiscating the vessels in question, when it is recognized that these same vessels have the right of search and of capture, and leaving our port to-day they will convert themselves to-morrow on the high seas into war-ships with the power of capturing our merchant ships.

Mr. Louis Renault insists upon the necessity of voting on the substance of the British proposal.

Mr. Heinrich Lammasch asks himself what will be the consequences of the adoption of the British proposal.¹ Article 5 contains a provision of a general nature, but it would seem to be preferable to examine each particular case. By the application of Article 2 and of Article 5 combined, merchant ships capable of conversion may be confiscated. It might also be said that they may be requisitioned and that this may be done with or without an indemnity. In a word, if the consequences of the application of Article 5 were foreseen as regards each particular hypothesis, we might perhaps reach a correct solution.

The President insists upon a decision. It seems to him that the Conference has a kind of moral obligation to take into account the practice that has heretofore been followed. Up to the present time belligerents have granted days of grace. It would be too bad if the Conference, instead of taking a step forward in this respect, should slip backwards. Again, it cannot be denied that it is very difficult to ascertain exactly what vessels are designated in advance to be converted into war-ships. That is why Article 1 gives the belligerent entire freedom to determine this for himself and permits him to detain and requisition, as he may wish.

[1953] The PRESIDENT proposes that the committee vote upon Article 1, omitting the clause relating to vessels that are designated in advance to be converted.

His Excellency Lord Reay states that under these conditions he will vote for Article 1, unless Article 5 is adopted.

Mr. Louis Renault says that, if the committee votes afterwards on the draft as a whole, everybody's rights will be reserved.

Article 1 of the draft regulations elaborated by Mr. FROMAGEOT² is adopted:

¹ Annex 24.

² Annex 23.

ARTICLE 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable period, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

His Excellency Mr. Keiroku Tsudzuki makes reservations with regard to Article 2; he cannot adopt it unless the question in Article 5 is decided in the affirmative.

Article 2 is adopted in the following form:

ARTICLE 2

A merchant ship unable, owing to circumstances of *force majeure*, to leave the enemy port within the period above contemplated, or which was not allowed to leave or was not granted a period within which to leave, cannot be confiscated. It is, however, liable to requisition, but subject to the obligation of restoring it after the war, if this is possible, and to compensate the owner for all loss incurred therefrom.

His Excellency Lord Reay states that he reserves his vote on Article 2.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be confiscated. They are only liable to detention, to be requisitioned if occasion demands, as stated above, and even destroyed on payment of compensation.

After these vessels have touched at a port in their own country or at a neutral port, they are subject to the laws and customs of maritime war.

Mr. Kriege remarks that Article 3, not having obtained a majority of votes at the last meeting, was not adopted and remains omitted.

The President replies that his Excellency Mr. RUY BARBOSA and Mr. FUSINATO, not having been present at the last meeting, were unable to vote.

Their vote might perhaps have an influence on the result of the balloting. [954] Mr. Fromageot points out that Article 3 is not the same as that on which the committee voted at the last meeting. The new article contains a compromise proposal, the examination of which was, it would seem, reserved. It gives the right not only to detain and to requisition, but also to destroy. Moreover, it preserves the right to an indemnity.

His Excellency Mr. Hammarskjöld thinks that in the committee votes can be reconsidered. By giving the right to destroy, the new article meets Mr. KRIEGE'S wishes and, together with Article 5 proposed by the British delegation, establishes a new situation on which the committee must vote.

Mr. Guido Fusinato declares that the new article is not the same, its legal import is different; furthermore, he will vote for it. He remarks that Article 1 merely expresses a wish, while Articles 2 and 3 create obligations.

His Excellency Mr. Ruy Barbosa does not agree with Mr. KRIEGE as to the effect of a tie vote, which cannot mean either rejection or adoption. In parliamentary assemblies, where there is a tie, the vote is postponed until a majority can be obtained.

The President shows that the wording of Article 3 is new, that it establishes a new right, the right to destroy, and that it takes into account the various observations that were suggested by its former wording.

His Excellency Mr. Ruy Barbosa says that this is a further reason for having a new vote.

His Excellency Lord Reay thanks Mr. GUIDO FUSINATO for his effort in the interest of conciliation by the adoption of the revised Article 3, which lays down new principles. He also requests that he be permitted to reserve his vote, in order to secure instructions from his Government.

The President replies that the members can vote with reservations.

Mr. Kriege, agreeing to the discussion of the revised Article 3, states that this provision leaves the same inequality between the Powers as that resulting from the original reading. It would follow from the revised Article 3 that a Power which has not sufficient ports may destroy vessels, but would be obliged to pay indemnities. It would therefore be in a less favorable position than another Power which, having at its disposal a sufficient number of ports where it could bring in vessels, would be able to profit by the right conferred by this provision without paying an indemnity.

His Excellency Mr. Keiroku Tsudzuki likewise is of the opinion that the maintenance of the right to an indemnity allows a situation of inequality to exist between the States.

His Excellency Baron von Macchio asks that, if the committee supports the idea of the destruction of vessels, it be specified that the passengers, ship's papers, etc., shall be removed to a place of safety.

Mr. Kriege has no objections to his Excellency Baron VON MACCHIO's proposal.

Mr. Fromageot remarks that the whole question is whether the owner or the belligerent shall bear the loss of the vessel.

Mr. Kriege replies that the rule of the right of capture will be applied.

[1955] Mr. Fromageot thinks that the situation is not the same. The vessel that is liable to capture was aware of the state of war; on the contrary, the vessel in question believes that a state of peace exists.

His Excellency Baron von Macchio insists upon the insertion of a provision concerning the passengers and ship's papers.

The committee concurs in this view.

His Excellency Baron von Macchio requests that the article make explicit mention of the right to an indemnity.

The committee proceeds to vote on Article 3.

Voting in favor of adoption: Austria-Hungary, Brazil, France, Italy, Netherlands, Russia, Serbia, Sweden.

Voting against adoption: Germany, United States, Argentine Republic, and Japan.

Not voting: Great Britain.

The President proposes that the committee vote on Article 4 with the modifications indicated. Its text is as follows:

ARTICLE 4

Enemy cargo on board the vessels referred to in the preceding articles is subject to requisition, with or without the ship, upon payment of compensation.

Yeas: Germany, Austria-Hungary, Brazil, France, Italy, Japan, Netherlands, Russia, Serbia, Sweden.

Nays: Argentine Republic.

Not voting: Great Britain.

Reserving its vote: United States.

The committee passes to the proposal¹ of Great Britain, which calls for the addition of a new Article 5, reading as follows:

ARTICLE 5

These provisions shall not be applicable to enemy merchant ships designated in advance for conversion into war-ships.

The President, in reading Article 5, points out the difficulties that arise in connection with the phrase "ships *designated* in advance to be converted into war-ships." It is his opinion that vessels capable of being converted into war-ships should not be understood as included in the formula of the British proposal.

Mr. Fromageot believes that the difficulties springing from the present text could be eliminated by a simple modification of the title of the regulations [1956] which would be worded so as to apply to the treatment of enemy merchant ships that are designated to be converted into war-ships on the outbreak of hostilities.

Mr. Louis Renault proposes that the committee vote on the principle, subject to the later formulation of a provision which will give it exact expression.

His Excellency Mr. Ruy Barbosa says that the solution proposed by Mr. FROMAGEOT would be the best if a mere question of form were involved, but there is a fundamental difficulty: we do not know what vessels are capable of being converted.

Mr. Guido Fusinato says that there is one way to put an end to this state of ignorance: all that is necessary is that the different Powers consent to furnish each other with lists of the vessels that are capable of being converted.

The President says that the committee has codified a principle which has been in existence in international practice since the Crimean war.

An exception to this principle is proposed by the British delegation. What is now necessary is the formulation of a provision stating clearly that it has reference to an exception.

Mr. Guido Fusinato says that he will vote for the text, if it is understood that the common law, as set forth in the preceding articles of the regulations, is applicable when there is no express designation *in advance*, as provided for in Article 5.

Mr. Heinrich Lammasch thinks that the committee might follow, to a certain extent, the Netherland proposal² and be satisfied with the assurance given by the other belligerent that the doubtful vessel will not be converted. Under these conditions the vessel will be considered a merchant ship.

Mr. Louis Renault thinks that such a provision is conceivable in the Netherland proposal, where the period is considered an obligation, but it is more

¹ Annex 24.

² Annex 22.

difficult to explain it in a project whose starting point is the *optional* nature of the period of grace. The belligerent always has the right to detain all merchant ships; all the more reason why he has this right as regards vessels that appear to him to be suspicious.

Mr. Heinrich Lammasch recognizes the difference between the situation contemplated by the Netherland proposal and that now under discussion. His proposal simply aims to restrict the effect of the English project.¹

The President reads Article 4 as drawn up by Mr. FROMAGEOT at the request of the committee.

Mr. Kriege asks whether the words "on payment of compensation" should not be added to this article.

Mr. Fromageot sees no objection to this.

Mr. Guido Fusinato asks whether it should not be stated that no indemnity will be allowed for goods constituting absolute contraband.

Mr. Fromageot replies that there seems to be no difficulty in the way of mentioning contraband in this connection. This conception does not come into being until there is a state of war; and the vessel, under the hypothesis, left port before war broke out.

[1957] His Excellency Lord Reay asks that the word "enemy" be inserted before the word "cargo," so as to keep the article from being in conflict with the Declaration of Paris.

Mr. Fromageot and his Excellency Mr. Keiroku Tsudzuki concur in this view.

Regarding a remark by Mr. GUIDO FUSINATO that a prize court will have to decide whether a merchant ship is or is not designated to be converted into a war-ship, Mr. Kriege believes that these courts may not have such questions brought before them, since merely the right to detain and requisition, not the right to capture, is involved. It would not be otherwise unless the English proposal were accepted, according to which vessels designated to be converted into war-ships may always be confiscated in any place whatever. It is therefore true that these vessels would be subject to capture and would have to be passed upon by prize courts.

His Excellency Lord Reay, for his part, is disposed to recognize that prize courts have the right to pass upon the possibility of converting the vessel.

His Excellency Mr. Keiroku Tsudzuki remarks that according to the Japanese law prize courts pass upon the lawfulness of the capture of enemy merchant ships even at the beginning of hostilities. Replying to Mr. KRIEGE he says that if the English proposal giving the belligerent the right to capture an enemy merchant ship designated to be converted into a war-ship is adopted, the prize court will be competent to pass upon the question of fact concerning this designation.

His Excellency Mr. Hammarskjöld concurs in Mr. FROMAGEOT'S opinion and proposes that there be added to the articles adopted by the committee the following provision, which would take the place of Article 5¹ proposed by the British delegation:

These regulations do not contemplate enemy merchant ships which have been designated in advance to be converted into war-ships.

¹ Annex 24.

In his opinion, this provision would have the advantage of not prejudging in any way the fate of vessels which would remain under the present law. The exception does not include merchant ships that may be converted, not even all those which, according to the intentions of the Admiralty, are destined to be converted; the vessels must have been designated by a special act.

His Excellency Lord Reay says that he has no objection to this.

Mr. Kriege declares that the technical character of conversion obliges him to reserve his vote.

The President proposes that the committee pass to a vote on the text proposed by his Excellency Mr. HAMMARSKJÖLD.

Yeas: United States, Argentine Republic, Austria-Hungary, Brazil, Great Britain, Italy, Japan, Netherlands, Sweden.

Nays: France, Russia.

Not voting: Serbia.

Reserving its vote: Germany.

[958]

FIFTH MEETING

AUGUST 16, 1907

His Excellency Mr. Martens presiding.

The minutes of the third meeting of the committee are adopted.

The President states that the program calls for the discussion of the projects relating to the crews of enemy merchant ships captured by a belligerent. Two proposals have been submitted to the Fourth Commission: that of the British delegation¹ and that of the Belgian delegation.² Finally, the British delegation on August 13 filed a new proposal which is a combination of the two foregoing.³

His Excellency Sir Ernest Satow states that he concurs in his Excellency Mr. VAN DEN HEUVEL's request with regard to the omission of the words "thus" and "on the other hand."

The President reads a letter in which his Excellency Mr. VAN DEN HEUVEL states that he is unable to attend the meeting, but gives in writing his concurrence in any measure which would result in the mitigation of the treatment of merchant ships in time of war.

Mr. Kriege states that he reserves his vote on the new English proposal, in order to examine it more carefully.

The President therefore proposes that the vote be postponed until the next meeting.

His Excellency Sir Ernest Satow desires to explain the changes contained in the new proposal:

Since the persons released by the belligerent captor will be, for the most part, sailors, members of the crew, the British delegation has deemed it better to substitute for their word of honor the more formal and solemn engagement of an oath not to serve against the belligerent captor.

A distinction is also drawn between the engagement to be made by a neutral and that to be signed by a subject of the enemy. In the Belgian proposal, the principle of which has been accepted by Great Britain, this engagement was expressed in general terms and stated that the captured individual must not

"serve against the capturing belligerent." It would seem that this is a [959] provision which is evidently not to be understood in the same sense when applied to a neutral as when applied to an enemy. The object of the proposal is to mitigate the measures applicable to a certain class of individuals who at present, according to international law, may be made prisoners of war. Now the assistance rendered the enemy by the neutral consists in his having taken service on board one of these vessels and having thereby aided in the

¹ Annex 45.

² Annex 46.

³ Annex 47.

carrying on of the enemy's commerce. If therefore the neutral is not to be made a prisoner of war but is to be released, it is only reasonable to require of him a pledge not to aid the enemy in the same way; that is to say, not to serve on board an enemy vessel. As a neutral, he may not, properly speaking, enlist under the flag of the belligerent. A pledge like that contained in the Belgian proposal would not therefore be sufficient, in so far as he is concerned. On the other hand, according to the new wording, a neutral seaman will have full and complete liberty to continue to exercise his calling on a vessel of his own country or of a country other than the belligerent country.

Again, it would be unjust to require of a seaman, the subject of an enemy Power, a pledge not to serve on board any merchant ship of his country, since this would be depriving him of the means of making a living. All that can be reasonably required of him is that he pledge himself not to render any service to the belligerent State—that is to say, to his own Government. It is clear that, if he were made a prisoner of war, his Government could not employ him in its service, and it is therefore legitimate to require of him the above-mentioned promise, according to which, although unable to render any assistance or service to his own Government, he will be free to earn his bread as he has been accustomed to by obtaining employment as a seaman on board a vessel of the merchant marine, even though it belong to his own country.

Mr. **Louis Renault** would like certain points made more precise. In the first place, to what merchant ships does the expression “which is sailing on a purely commercial mission” not apply?

His Excellency Sir **Ernest Satow** sees only one exception—auxiliary vessels.

Mr. **Louis Renault** would like to know what is service “connected with the hostilities.”

His Excellency Sir **Ernest Satow** replies that no member of the crew of a captured vessel may serve in the navy or in the army.

Mr. **Louis Renault** insists upon a perfectly clear and precise provision with regard to seamen.

His Excellency Sir **Ernest Satow** thinks that the services in question include also services which seamen may render in barracks as reservists. It is indispensable, as Mr. **RENAULT** has pointed out, that the terms of the project be clear and comprehensible.

His Excellency Mr. **Keiroku Tsudzuki** asks whether the word of honor will suffice, or whether an oath will be necessary.

His Excellency Sir **Ernest Satow** believes that in the matter of seamen it would be inadvisable to be satisfied with their word of honor, and that it would be necessary to require an oath. As for officers, their word of honor gives sufficient guarantee.

The President remarks that the oath does not exist in all marines.

[1960] His Excellency Mr. **Keiroku Tsudzuki** proposes therefore that the expression “solemn promise” be used.

Mr. **Louis Renault** thinks that the best way to avoid equivocalness would be to have this promise signed in duplicate.

Mr. **Guido Fusinato** asks whether the captor State is forbidden to make use of the neutral crew, if the latter consents, or whether the pledge applies only to the enemy.

Mr. Louis Renault replies that in liberating the neutral crew under certain conditions, the captor State secures guarantees only against its enemy and not against itself.

Mr. Guido Fusinato states that he agrees with Mr. LOUIS RENAULT.

Mr. Heinrich Lammasch thinks that the condition of a solemn promise or plighted word of honor in such circumstances might encounter obstacles to its application in certain nations. In Austria-Hungary, for example, naval officers must not give their word of honor; as regards officers of the merchant marine, Mr. HEINRICH LAMMASCH does not know whether the same rule exists. In any event, a pledge, a formal promise, or an oath may be very difficult to obtain. The oath in particular does not exist as far as the subjects of nations that have not the Christian conception thereof are concerned. Would it not be better under these circumstances for the State to agree not to take knowingly into its service members of a crew which the captor shall have set free?

Mr. Kriege is of Mr. HEINRICH LAMMASCH's opinion. The laws of certain countries do not allow officers to give such pledges. The officers of the merchant marine may be reserve officers and subject to the same rules. As regards ordinary seamen, formal pledges would perhaps have little value, given the needs of daily life. It would seem that it should suffice to stipulate the obligation on the part of the enemy State not to engage members of the crew for any service whatever. The Government of the captor State might, to this end, cause to be transmitted to its enemy a list of the members of the liberated crew.

His Excellency Sir Ernest Satow remarks that the last paragraph forbids a belligerent State knowingly to employ an individual in violation of his pledge. If the State has no knowledge of the pledge, it can incur no liability. Again, why make a distinction between an officer of the active army and a reserve officer? It constantly happens in the active service that prisoners are released on parole because the officers know the value of the word of honor. This is not so as regards seamen and that is why the British proposal makes their liberation conditional upon an oath or pledge in writing.

The President states that Article 10 of the 1899 Regulations recognizes the right of officers to be set free on parole, unless their national law forbids it.¹

Mr. Kriege thinks that the word "knowingly" does not give sufficient guarantee to the captor State when the enemy has no knowledge of the names of the seamen composing the liberated crew, and he cannot have such knowledge unless the composition of the crew is notified to him. That is the best guarantee that can be found

[961] His Excellency Mr. Hammarskjöld states that he prefers the wording of the original British proposal. The new reading forbids neutral members of the crew to serve on board an enemy merchant ship or war-ship. It would be better for us not to concern ourselves with neutral seamen, whose liberation can do no great harm to the captor.

Mr. Louis Renault points out that the captor Government can very well make known to its enemy the members of the crew which it has set free. The Geneva Convention contemplates such communications, both as regards the dead, and the sick and wounded. There is nothing to prevent a similar course as regards prisoners released on parole.

His Excellency Sir Ernest Satow fears that the captor State may neglect

¹ See Second Commission, annex 1, *ante*, p. 231 [233].

to communicate this information and thereby leave its enemy entire freedom of action.

Mr. Guido Fusinato is not in favor of a pledge on the part of the State because it is not susceptible of any sanction, while a personal pledge admits of the sanction established by Article 12 of the 1899 Convention.

His Excellency Sir Ernest Satow personally is not in favor of bringing before the council of war those who have violated their pledges. He prefers to hold to Article 10 of the 1899 Convention, which stipulates that prisoners shall not be released if the laws of their country do not allow them to give a pledge that they will no longer serve.

Mr. Kriege thinks that the assimilation of the crew of a merchant ship to soldiers is not exact. It is here a question of young men who, not having performed their military service, are not imbued with principles of military discipline. Moreover, if a State finds itself forced by virtue of its laws to leave its subjects prisoners of war, it will be in a situation inferior to that of the State whose laws are not the same in this respect.

The President asks the committee to come to a decision on the question which would merely be of an academic character. It might pass upon the question whether or not the crew of the captured vessel are prisoners of war.

Mr. Louis Renault remarks that the crew are considered prisoners of war, but they may be released under certain conditions.

His Excellency Sir Ernest Satow concurs in this view.

The President then proposes that the committee decide whether an oath or a pledge should be required or whether, as Mr. KRIEGE proposes, notice must be given the enemy of the members of the liberated crew.

His Excellency Sir Ernest Satow states that Mr. KRIEGE's observations constitute two amendments to the British proposal,¹ the first consisting in the omission of any pledge on the part of the crew; the second requiring the captor to transmit to his enemy a list of the seamen composing the crew that has been captured and set free. The British delegation states that it cannot accept the latter amendment. As regards the inequality, of which Mr. KRIEGE speaks, it cannot influence the committee, since it is created by the States themselves.

Mr. Fromageot (reporter) explains that enemy seamen will not be able to enter the military service of their country, while neutrals will not be able to serve on any enemy war-ship or merchant ship. The putting of this [962] latter prohibition into effect will be very difficult for certain States, which have no control over the engaging of the crews of their ships.

Mr. Kriege replies that in most countries seamen are subject to the control of the State.

His Excellency Sir Ernest Satow says that seamen thus set free may serve on a merchant ship belonging to the enemy State without the authorities of that State being aware of the fact.

Mr. Kriege explains what will take place in practice. The captor State A sends to its enemy B the list of the seamen whom it has set free; the State B will communicate this list to all its authorities and its consuls, who will take note thereof. If a liberated neutral seaman wishes to take service on a vessel of the State B, he must necessarily sign his agreement before the competent authority or consul of that State.

¹ Annex 45.

Mr. Fromageot states that there are States that exercise no control over the agreements entered into by seamen on vessels of their nationality.

Mr. Louis Renault thinks that the differences in the laws of the various European countries will prevent the States from strictly fulfilling their obligations with regard to the service of liberated seamen. There are countries that permit only a certain proportion of foreigners in the crews of their vessels. France, for example, does not allow them to constitute more than one-fourth of the crew. It is quite certain that these countries will exercise a much more rigorous control over sailors and their nationality than countries which have not the same requirements.

The President states that the committee is in agreement upon the point that the crew are in principle prisoners of war, but that they may be released under certain conditions, such as an oath, a written promise, or the communication of the list of the crew. Why, then, not admit both conditions?

Sir Ernest Satow concurs in this suggestion.

Mr. Kriege states that he cannot accept it, as it is at variance with his proposal. He says that if his proposal is accepted, the seamen will not be prisoners of war and consequently must be released. The Government to which they are subject would be responsible as regards their acts in case it has knowledge of their liberation and of their identity.

Mr. Heinrich Lammasch proposes that a distinction be drawn between seamen of enemy nationality and those of neutral nationality. From the former an oath or pledge would be required, as provided by Article 20 of the 1899 Convention. As for officers and seamen of neutral nationality, the system proposed by the British delegation¹ should be returned to; while for seamen of enemy nationality the system which has just been proposed by this same delegation might perhaps be accepted.

His Excellency Sir ERNEST SATOW having accepted the principle of this distinction, the President requests Mr. HEINRICH LAMMASCH to make it the subject of a written proposal to be voted on at the next meeting.

Mr. Kriege thinks that the application of Mr. HEINRICH LAMMASCH's proposal will give rise to the difficulties pointed out by Mr. LOUIS RENAULT, [1963] but when the British delegation admits the principle of communication to the enemy as regards neutral seamen, it ought, in his opinion, to admit it *a fortiori* as regards enemy sailors.

Again, the project speaks of a merchant ship of the enemy sailing on a purely commercial commission. Are we to conclude that the crew of vessels, which in one of the British proposals are included in the designation "auxiliary vessels," are exempt from the application of the rule?

His Excellency Sir ERNEST SATOW replies in the affirmative.

The President requests the committee not to pass upon Mr. HEINRICH LAMMASCH's proposal until the next meeting.

As the program calls for the discussion on blockade, the PRESIDENT recalls that the committee has before it an Italian proposal,² a Brazilian proposal,³ and two amendments, one from the delegation of Great Britain,⁴ the other from the

¹ Annex 45.

² Annex 34.

³ Annex 36.

⁴ Annex 37.

United States of America.¹ The Italian proposal, being the basis of these different proposals, can be used as the starting point of the committee's discussions.

The **PRESIDENT** thinks that he should point out, in this connection, that the Conference has not received instructions to change the Declaration of Paris of 1856, which is a limitation placed upon its discussions.

Mr. Guido Fusinato asks for information as to the import of this observation.

The **President** replies that the Conference may develop the Declaration of Paris, that it may define its consequences, but that it may not modify it.

Mr. Guido Fusinato points out that the Italian proposal is a development of the Declaration of Paris, but that other proposals may be inspired by a different idea. The committee holds its powers from the Commission, which, in turn, holds its powers from the Conference. No preliminary observation was made on the subject of setting a limit to the discussions on blockade.

The **President** states that the Declaration of Paris is the basis of the Italian and Brazilian proposals, which do not change the real character of blockade.

His Excellency **Mr. Keiroku Tsudzuki** inquires whether all the signatories to the Hague Convention have adhered to the Declaration of Paris.

Mr. Guido Fusinato replies that all the signatories to the Declaration of Paris are signatories to the Hague Convention.

The **President** considers that this does not change the nature of the Declaration of Paris.

The **PRESIDENT** reads Article 1 of the Italian proposal² worded as follows:

ARTICLE 1

In order to be binding, a blockade must be effective, declared, and notified.

His Excellency **Sir Ernest Satow** remarks that the provision in Article 1 is merely a commentary on the Declaration of Paris.

[964] His Excellency **Mr. Keiroku Tsudzuki** asks whether the Conference would not have modified, if it had been necessary, the Declaration of Paris in the matter of the treatment of private property at sea.

Mr. Kriege remarks that the States which adopt Article 1 of the Italian proposal will thereby have adhered to one of the essential principles of the Declaration of Paris.

ARTICLE 2

A blockade is effective when it is maintained by naval forces that are really sufficient to prevent passage, and so stationed as to render it clearly dangerous for vessels to attempt to run the blockade.

A blockade is not considered as lifted if bad weather forces the blockading vessels to leave their stations temporarily.

With regard to Article 2, the **President** recalls that the British delegation has requested that the word "clearly" be changed to "really."

His Excellency **Sir Ernest Satow** considers the latter word more in conformity with the Declaration of Paris.

Mr. Guido Fusinato remarks that the *reality* of the danger follows from the first sentence of the definition of an effective blockade contained in Article 2.

¹ Annex 35.

² Annex 34.

The word "clearly" adds something to define the spirit of the Declaration of 1856.

Mr. Louis Renault says that as a matter of fact the word "clearly" has a broader meaning than the word "really."

His Excellency Sir Ernest Satow would like information upon the meaning of the word "stationed." Is this word to be taken literally as meaning that the vessels must be anchored and must not maneuver? He recalls, in this connection, that Chief Justice COCKBURN declared that from the point of view of law a blockade is effective if the vessels are of such number and so disposed that violation of the blockade becomes dangerous, although certain vessels may succeed in running it.

His Excellency Mr. Keiroku Tsudzuki states that he concurs in the ideas set forth by his Excellency SIR ERNEST SATOW.

Mr. Louis Renault proposes that the word "manifestly" be used.

His Excellency Sir Ernest Satow says that his amendment reproduces the wording of the Declaration of Paris.

Captain Behr prefers the word "really." He thinks that the preservation of the word "clearly" would create a contradiction between the two paragraphs of Article 2. The danger might not be evident and yet real.

Mr. Guido Fusinato, replying to his Excellency Sir ERNEST SATOW, states that the word "stationed" does not imply anchored, but he believes, on the other hand, that it excludes blockade by cruisers. With regard to the word "clearly," Mr. GUIDO FUSINATO would consent to its being replaced by the word "manifestly." Furthermore, the words "clearly" and "manifestly" have the advantage of excluding blockade by mines, in conformity with a proposal which has already been made by the British delegation.

[965] His Excellency Sir Ernest Satow says that the Declaration of Paris refers only to vessels and excludes mines. He still prefers the word "really" and proposes that the word "maneuvering" be substituted for "stationed."

Mr. Guido Fusinato considers that these various changes modify the substance of his proposal and tend to recognize blockade by cruisers.

His Excellency Sir Ernest Satow states that he accepts the principle of Article 2, if the word "stationed" does not mean "anchored."

His Excellency Mr. Keiroku Tsudzuki proposes that the words "disposed in such a way as to" be substituted.

Mr. Guido Fusinato does not object to taking this formula into consideration.

His Excellency Mr. Keiroku Tsudzuki concurs in Captain BEHR's observations concerning the word "really."

His Excellency Sir Ernest Satow accepts the word "stationed."

A vote is taken on the word "clearly," which is adopted by a majority.

His Excellency Sir Ernest Satow then arises and reads the following statement:

In view of the well-known difference between the two practices, which might be designated as the "continental system" and the "Anglo-American system," we do not believe it possible for the time being to reach a compromise. As his Excellency the President of the Fourth Commission has been good enough to point out, the question of blockade is not specifically

included in the program drawn up by the Government of Russia. Therefore, the Government of Great Britain was not required to give us instructions on this point before the meeting of the Conference. There is not time enough to examine this question carefully or to try to reconcile the divergent views of the two schools. In order to reach a compromise, concessions must be made by both sides, and we are perhaps not ready to do this. It appears therefore to our delegation that it would be preferable to suspend the discussion of this question.

Mr. Guido Fusinato asks his Excellency **Sir ERNEST SATOW** what is the exact import of the statement he has just read.

His Excellency **Sir Ernest Satow** replies that he has not received instructions from his Government permitting him to make the compromises which the question of blockade and the change in the practice that has been in vogue for more than a century seem to demand. It would take a long time to secure such instructions; it would be necessary to make trips back and forth to London, and to confer with the Admiralty. It is therefore preferable to postpone the question to the next Conference, not that the British delegation refuses to enter into its discussion, but it does not believe that an agreement can be reached.

Mr. Guido Fusinato does not believe that the committee has the power to postpone a question to a subsequent Conference; at most it can propose to the Commission to ask the Conference to be relieved of the study of questions relating to blockade.

Personally, he is ready to make any concessions calculated to remove the difficulties which the conclusion of an agreement on this subject appears to present, and he believes that before proposing suspension, the committee should assure itself that there is positively no hope of reaching an agreement.

[966] **Mr. Kriege** recalls that by the terms of the Russian circular, the Conference is called upon to discuss the question of the rights and duties of neutrals at sea. Given the fact that a blockade imposes upon neutrals duties that are very important from this point of view, the question of blockade enters into the scope of the program of the Conference.

The **President** says that in the month of June the distribution of the questions among the various Commissions by the Bureau of the Conference brought forth no protests and that he has never asserted that the question of blockade was outside of the program of the Imperial Government and of the Conference.

Mr. Louis Renault thinks that the Conference alone has power to relieve the Commission of its duty to discuss the question of blockade.

The **President** considers that in these circumstances it would seem to be useless to continue the discussion in the committee until the matter has been referred to the Commission.

[967]

SIXTH MEETING

AUGUST 21, 1907

His Excellency Mr. Martens presiding.

The President remarks that the minutes of the fifth meeting have just been distributed and consequently they cannot be approved at to-day's meeting.

With regard to the minutes of the fourth meeting, his Excellency Baron von Macchio says that the provisions relating to passengers and ship's papers, which the committee adopted on his motion, do not appear in the text of Article 3, which was voted at the last meeting. He therefore asks that a second paragraph be inserted, reading as follows:

It is of course understood that the belligerent shall ensure the safety of the passengers and the security of the ship's papers.

As for the present paragraph 2 of Article 3, it will become paragraph 3.

Mr. Fromageot (reporter) replies that he has prepared the following formula which gives satisfaction to his Excellency Baron von Macchio's desire and which will be distributed at once: conclude the first paragraph with the words, "and with the obligation that the safety of the passengers and the preservation of the ship's papers be provided for."

His Excellency Baron von Macchio approves the reading proposed by Mr. FROMAGEOT.

The President recalls that the order of business calls for a vote on the proposal concerning the crews of captured neutral vessels; but the delegation of Russia, not having received instructions, requests a postponement to the next meeting of this vote, as well as of the vote on Mr. HEINRICH LAMMASCH's proposal. The members of the committee will receive to-day the printed text of this last proposal, which was drawn up in conjunction with his Excellency Sir ERNEST SATOW.

The program then calls for a discussion of the exemption of fishing boats from capture. This question is the subject of two proposals—one by Rear

Admiral HAUS¹ and the other by Lieutenant Commander IVENS FERRAZ.² [968] It was likewise the subject of a speech by the first delegate of the United States, who alluded to a decision by Mr. Justice GRAY, in which the question was examined in its various aspects.³

The Portuguese proposal, being the most extensive and detailed, will serve as the basis of discussion.

Lieutenant Commander Ivens Ferraz explains the arrangement of his proposal. Article 1 contains an exception to the common law in favor of fishing

¹ Annex 50.

² Annex 49.

³ See annex to the minutes of the twelfth meeting of the Fourth Commission.

boats. Article 2 restores the application of the common law as regards vessels used in fishing on a large scale, and Article 3 enumerates the cases in which the immunity ensured to fishing boats by Article 1 does not apply. It seemed to be preferable, however, to condense these various proposals into a single article.

The President does not believe it possible for the committee to discuss a new article without having the printed text before it.

Mr. Louis Renault requests that this text be dictated.

Mr. Fromageot dictates to the committee the revised Article 1 of the Portuguese proposal:

Vessels actually engaged in coastal fishing operations within the usual zone or engaged in small coastal business are exempt from capture.

This exemption ceases to apply whenever there is reason to suspect any participation in hostilities, such as refusal to obey the injunctions of a belligerent forbidding temporarily their approaching a certain zone, transportation of contraband, espionage, the fact of being armed or of having on board apparatus or signals which are not in use amongst fishermen.

His Excellency Sir Ernest Satow agrees to the discussion of this article.

The President notes the committee's concurrence therein.

Lieutenant Commander Ivens Ferraz explains that the Portuguese proposal¹ does not contemplate any special protection of the fishing industry, but has solely a humanitarian object—the protection of a class of poor people who deserve the consideration of the Conference and who should not be deprived of their means of livelihood. To subject coastal fishing boats to the right of capture is an attack on an industry of a very limited sphere of action, the destruction of which would have no effect upon the economic life of the country as a whole.

The Portuguese proposal contemplates cases in which this privilege will be suspended. In the first place, there is the fear of their participation in war operations. It may be feared, for example, that by remaining in a certain spot, fishermen may obtain information which they will use to the benefit of their country, or that they are carrying implements of war. If they do not, in such cases, obey the injunctions of the belligerent, they may lose the benefit of their exemption. As for the carrying of implements of war, the transportation of contraband, or engaging in espionage, long explanations do not seem to be necessary. The mere discovery of the fact would mean confiscation.

Paragraph 1 speaks of the "usual zone." This term aims to give fishing vessels the privilege indispensable in certain countries of going beyond the bounds of their territorial waters.

The words "or in small . . . business" correspond with those used in

Rear Admiral HAUS's proposal. They refer to boats that carry fish.

[1969] His Excellency Baron von Macchio is in perfect agreement with the

Portuguese delegation and thanks Commander IVENS FERRAZ for having taken into account the Austro-Hungarian proposal.² He thinks, however, that it is necessary to mention more explicitly boats that are used in rural service, that is to say, in the transportation of agricultural products. It is, moreover, indispensable to stipulate that every requisition imposed by military necessities shall

¹ Annex 49.

² Annex 50.

be subject to an indemnification fixed in conformity with the rules in force in land warfare.

Mr. **Louis Renault** points out that it follows from the explanations made by Lieutenant Commander **IVENS FERRAZ** that the proposal was inspired above all by a humanitarian impulse. The fishing industry has indeed a very limited sphere of action and its destruction can have no effect on the economic life of the country. It would therefore be a useless injury. This conception has influenced the drafting of the article. It has resulted in extending the privilege of immunity, not only to boats that are engaged in coastal fishing, but also to those which go out to sea beyond their territorial waters. Such boats may be of considerable tonnage and propelled by steam. We have here a series of consequences upon which certain explanations are necessary.

Again, the word "actually" in paragraph 1 is not very clear. Boats may go a distance of seven or eight kilometers to fish. While the vessel is on its way to its destination or is returning therefrom, it is not "actually" engaged in fishing, and yet it may not be seized.

It would seem also that paragraph 2 needs revision. It is quite true that capture may take place if the fishing boat participates in hostilities, but it would seem to be an exaggeration to say that the fear of such participation gives of itself the right to capture. Perhaps it would be desirable also to fix the tonnage of the vessels that shall benefit from the exemption from the right of capture, and to state that they must always, under penalty of being captured, obey the injunctions of the squadron commanders.

His Excellency Sir **Ernest Satow** remarks that participation in hostilities may be the act of an individual who, through patriotism, engages in espionage or in the transportation of contraband; but the fact of having on board an implement of war, such as a torpedo, cannot be the fact of an individual acting on his own initiative without the complicity of his Government. Now, it cannot be admitted that a Government may employ a fishing boat as a torpedo boat. Such a proceeding would result in compelling its adversary not to spare any of these boats. It would therefore not be inadvisable to forbid Governments to make use of these boats for military purposes.

His Excellency Mr. **Keiroku Tsudzuki** does not admit that such a prohibition can apply to junks, which are used in coastal fishing but which can also be used for the transportation of troops.

His Excellency Sir **Ernest Satow** replies that he refers only to the case of a fishing boat's being used as a torpedo boat.

Mr. **Fromageot** inquires whether the provisions concerning the conversion of merchant ships into war-ships would not be a better place for the prohibition of which his Excellency Sir **ERNEST SATOW** speaks.

His Excellency Sir **Ernest Satow** replies that he has in mind only coastal fishing boats.

[970] Mr. **Guido Fusinato** asks if the fact that a State has used a fishing boat as a torpedo boat will deprive all such boats of the benefit of exemption.

His Excellency Sir **Ernest Satow** supposes that an ironclad is destroyed by a torpedo launched by a fishing boat. It is quite certain that the belligerent will take every precaution to prevent the recurrence of such an act. That is why it is not inadvisable to stipulate the prohibition as a corollary to the exemption.

His Excellency Mr. **Keiroku Tsudzuki** does not admit that the prohibition can in any case refer to the transportation of troops.

Rear Admiral **Siegel** asks what is meant by "small . . . business." Is it coasting trade?

Lieutenant Commander **Ivens Ferraz** replies that it does not include coasting trade, but only the boats which carry the catch of fish and those referred to in Rear Admiral **HAUS**'s proposal.¹

Rear Admiral **Siegel** asks further whether the fishing boats which benefit by the exemption include both sailboats and steamboats.

Lieutenant Commander **Ivens Ferraz** replies that they include only sailboats, the boats belonging to those engaged in fishing on a small scale, whose exemption is the result of humanitarian sentiments.

His Excellency Mr. **van den Heuvel** then proposes that the term "fishing barks" be used.

His Excellency Mr. **Keiroku Tsudzuki** says that there are big sailboats.

Mr. **Louis Renault** deems it preferable to use the tonnage basis.

Rear Admiral **Siegel** considers it necessary to come to an agreement on the term "usual zone."

The President notes that the committee is in agreement as to confining the benefits of exemption to sailing barks and rowboats, excluding steamboats.

Jonkheer van Karnebeek says that the definition of "usual zone" requires also a definition of coastal fishing. The definition, which seems to be that of Mr. **LOUIS RENAULT**, namely, that coastal fishing is that carried on in territorial waters, seems to him too restrictive.

In the first place, coastal fishing is carried on, as a matter of fact, outside of territorial waters. There are, moreover, French ordinances, among others those of 1854 and 1870, in which it is said:

You shall not place any obstacle in the way of coastal fishing, even along the coasts of the enemy.

That assumes, it would seem, that coastal fishing is not limited to the territorial zone. Coastal fishing appears to be rather that which is carried on anywhere at all and with any kind of boat by the population along the coast, and which constitutes the chief means of livelihood of this population. What distinguishes it from fishing on a large scale is that it is not, properly speaking, a real industrial enterprise, which would be beyond the means of this population. If a territorial limitation were placed upon the conception of coastal fishing, it would seem to be a backward step.

Mr. **Guido Fusinato** thinks that this definition is a very difficult one to formulate. For his part, he is in favor of the form used in the Austro-[971] Hungarian proposal, "engaged in the territorial waters." In order to prevent abuses of which they would be the first victims, it is necessary to lay out the limits within which vessels exempt from capture may carry on their business in time of war.

His Excellency Mr. **Keiroku Tsudzuki** says that in Japan small boats often go a long way.

Lieutenant Commander **Ivens Ferraz** cannot concur in Mr. **GUIDO FUSINATO**'s opinion. There are spots along the coasts of various countries, Portugal among them, where the water is very deep; fishing boats cannot carry on their

¹ Annex 50.

calling there and are at times obliged to go as far as eight or even twelve miles. Even the law prohibits our fishermen to use dragnets in territorial waters. On the other hand, the tunny and sardine fisheries, in which vast business enterprises engage on a large scale, are carried on at more than three miles from the coast. The limitation of coastal fishing to territorial waters would therefore result, in time of war, in depriving these fishermen of their means of livelihood.

His Excellency Sir **Ernest Satow** shares this point of view. In many countries, in England for instance, fishermen are forced to go far beyond the bounds of the territorial zone; they go sometimes more than ten miles out into the English Channel. The term "coastal fishing" may be accepted; it excludes without any doubt the Newfoundland fisheries. Moreover, it would not be necessary to specify steamboats as not included among fishing boats, for a certain number of the latter use auxiliary steam motors.

His Excellency Mr. **van den Heuvel** is of his Excellency Sir **Ernest Satow's** view, in so far as the zone within which immunity should be proclaimed is concerned. The protection should be extended to small barks, which fish not only in territorial waters, but in the waters near the coast as well. The question of vicinity is a question of fact; it must be passed upon by taking into account local conditions and the places where the fishermen are accustomed to ply their calling. Immunity covers all the operations of fishing; it therefore applies to the trip to the fishing ground, the stay of the boat in those waters, and the return or conveyance of the catch of fish to the coast. The expression "engaged in coastal fishing" seems to him clear and unequivocal.

Mr. **Guido Fusinato** shares this view.

His Excellency Mr. **van den Heuvel** recalls that the Belgian proposal on the immunity of private property at sea exempted from the right of capture not only fishing boats, but also the tackle on board and their catch of fish. He thinks that that goes without saying and need not be specifically stipulated.

Captain **Behr** states that the exemption of fishing boats must admit of an agreement not to employ them for military purposes. This agreement should be put in the form of a proposal and printed and distributed.

The **President** replies that such an agreement was the subject rather of a suggestion than of a formal proposal.

His Excellency Sir **Ernest Satow** says that to justify the exemption which it is proposed to establish for fishing boats, the Governments must bind themselves not to use them.

[972] The **President** recalls that, as regards espionage, the distinction alluded to by his Excellency Sir **Ernest Satow** as to the complicity of the Government should be drawn.

Rear Admiral **Siegel** asks, with respect to Article 4, whether to *detain* implies the right to *keep* for use for military purposes.

Lieutenant Commander **Ivens Ferraz** replies that Article 4 gives the belligerent the right to detain fishing boats for a certain length of time, to prevent them, for instance, from landing to convey information which might in certain cases aid in the success of military operations.

Mr. **Louis Renault** proposes that the expression used in the convention on hospital ships be employed. It has a very broad meaning and gives very extensive powers to the commander of the naval forces. As this Convention is

inspired by purely humanitarian sentiments, its spirit and form may well be used as a basis.

His Excellency Sir Ernest Satow agrees with Mr. LOUIS RENAULT and leaves the drafting of a text to the reporter.

His Excellency Mr. Milovan Milovanovitch inquires whether the detained vessel may be requisitioned. He thinks that in the interest of the owners it is necessary to limit the time of detention and not to permit permanent detention upon payment of an indemnity.

His Excellency Baron von Macchio recalls that the Austro-Hungarian proposal,¹ while inspired by humanitarian sentiments, reserves to belligerents the right to requisition fishing boats.

Lieutenant Commander Ivens Ferraz thinks that it would be very difficult to determine the time limit in advance. The boats may be employed for the carrying of a message or for the transportation of wounded. It may also be desired to remove them from waters where there are torpedoes.

Mr. Louis Renault does not think that it is necessary to fix a time limit, for there can be no doubt that the belligerent will release the boats as soon as he can.

The President notes that the committee is in agreement upon the right of the belligerent to exercise a certain control over fishing boats, to force them to go away, to detain them for a certain time. He asks whether the committee is in favor of the right of requisition.

His Excellency Mr. van den Heuvel, in spite of his desire to protect boats engaged in coastal fishing, does not think that they can be exempted from requisition. They are subject thereto just as small vehicles are on land. Whether in port or at sea, they remain subject to requisition by the State to which they belong and by the enemy belligerent in whose sphere of operations they happen to be. That is what is sanctioned by the Austro-Hungarian proposal.

His Excellency Sir Ernest Satow is not in favor of the right of requisitioning fishing boats, as it is not in harmony with the prohibition to employ them for military purposes.

His Excellency Mr. van den Heuvel replies that these boats may be used for the carrying of a message, the transportation of wounded, and that there is no reason to give them the benefit of exceptional treatment which small vehicles on land do not receive.

[973] His Excellency Sir Ernest Satow insists upon the necessity of not employing these boats, which, when all is said and done, constitute a negligible quantity.

His Excellency Mr. Milovan Milovanovitch remarks that the humanitarian purpose in mind must not be lost sight of. If the committee admits the right of requisition, it disregards this purpose and deprives the owners of fishing boats of their means of livelihood. If it is the intention to allow them the opportunity of making a living, the belligerent must not be given the right to confiscate them or to requisition them permanently.

The President considers this a question of principle which the committee must pass upon.

His Excellency Mr. van den Heuvel points out that the rejection of the Austro-Hungarian proposal would result in the introduction of two special provisions for fishing boats: there would be a first provision which would recognize

¹ Annex 50.

inviolability of private property in their individual case, just as it is recognized in general on land; and there would be a second provision which would sanction for their benefit, contrary to the rule on land, exceptional treatment in the matter of requisitions.

The **President**, having explained the two conflicting opinions, puts the question to vote. The right of requisition is adopted by a vote of 9 to 5.

Rear Admiral **Siegel** inquires whether big sailboats with gasoline engines are included in the class of steamboats. It is his personal opinion that they should be.

Captain **Behr** proposes that boats having a "mechanical motor" be excluded from the exemption. They are not the property of poor fishermen, there is no reason why they should benefit from the exemption.

His Excellency Mr. **Hagerup** remarks that there are frequently small barks with gasoline or benzine motors, which, however, cannot be considered large boats. The exclusion of such boats from the exemption would render the Convention useless to Norway.

Lieutenant Commander **Ivens Ferraz** says that there are also sailboats which have mechanical motors for auxiliary purposes.

The **President** notes the agreement of the committee that steamboats be excluded from the exemption and that sailboats and rowboats receive the benefit thereof.

His Excellency Baron **von Macchio** requests the inclusion of sailboats and rowboats with an auxiliary motor.

His Excellency Mr. **Keiroku Tsudzuki** is of the opinion that the question should not be settled by the Conference, but that the belligerent be left entirely free to decide to which class small steamboats belong.

The **President** notes that the committee is of the opinion that it be left to the belligerent to decide questions of fact and proposes that a vote be taken at the next meeting on the text which the reporter will prepare, taking into account the Portuguese proposal,¹ the Austro-Hungarian amendment, as well as the observations that will appear in the minutes of to-day's meeting.

[974] Mr. **Guido Fusinato** asks that this text mention the proposal laid before the Commission by his Excellency Count **TORNIELLI** concerning vessels charged exclusively with scientific missions.

His Excellency Mr. **van den Heuvel** seconds this proposal.

His Excellency Mr. **Hagerup** remarks that the Austro-Hungarian proposal,² in mentioning the right of requisition and the obligation of paying an indemnity, refers for the application of this right to the rules in force in land warfare. He supposes that Mr. **LOUIS RENAULT** will not approve this reference; but aside from this criticism in the matter of form, his Excellency Mr. **HAGERUP** does not consider an indemnity limited to the value of the boat sufficient. He thinks that, in order to satisfy the just observations of his Excellency Mr. **MILOVAN MILOVANOVITCH**, there should be added a supplemental indemnity to offset the loss of work, which might be estimated at 10 per cent.

His Excellency Baron **von Macchio** and Rear Admiral **Siegel** have no objection to make to this proposal.

Mr. **Louis Renault** remarks that this proposal will make the treatment of

¹ Annex 49.

² Annex 50.

fishing boats still more exceptional and falls under the criticisms already made by his Excellency Mr. VAN DEN HEUVEL.

His Excellency Mr. Keiroku Tsudzuki states that he does not concur in his Excellency Mr. HAGERUP's suggestion.

His Excellency Sir Ernest Satow informs the committee of his intention to lay before it a proposal concerning the conditions under which fishing boats may be requisitioned.

The President requests his Excellency Sir ERNEST SATOW to be good enough to file his proposal so as to admit of its discussion next Friday, together with the text to be drawn up by Mr. FROMAGEOT and the proposal that his Excellency Mr. HAGERUP is to present.

[975]

SEVENTH MEETING

AUGUST 23, 1907

His Excellency Mr. **Martens** presiding.

The minutes of the fourth and fifth meetings are adopted.

The **President** proposes that the committee postpone to the next meeting the adoption of the minutes of the sixth meeting.

Rear Admiral **Sperry** asks that the remarks of Mr. **FROMAGEOT** (reporter) concerning the instructions issued by the Government of the United States at the time of the war with Spain, which were made at the fourth meeting of the committee and which have been inserted in the minutes of that meeting, be inserted in the minutes of the third meeting.

The **President** reads the draft regulations, presented by Mr. **HEINRICH LAMMASCH**, on the subject of the crews of enemy merchant ships captured by a belligerent,¹ which are approved by the British delegation.

Mr. **Heinrich Lammasch** states that he does not claim to be the originator of this proposal. It is a combination of two British proposals—the first² concerns the treatment of neutral subjects in the captured crew; the second, filed on August 16,³ contains a modification with reference to enemy subjects under the same conditions.

The **President** replies that the draft regulations under discussion are the work of both the British and Austro-Hungarian delegations.

Mr. **Guido Fusinato** inquires whether the opening words of the proposal aim to exclude from the benefit of liberation only the crews of auxiliary vessels or also the crews of merchant ships that carry contraband of war or that have attempted to violate a blockade.

His Excellency Sir **Ernest Satow** replies that the proposal excludes from the benefit of liberation only the crew of an auxiliary vessel.

Mr. **Guido Fusinato** remarks that the proposal requires a formal promise by neutral captains and officers and a written promise by enemy captains and [976] officers. From this wording it may be inferred that neutrals will give merely a verbal promise and not a written one. It would be preferable to have them sign also a written promise, which would furnish the proof of their liberation and of their identity.

His Excellency Sir **Ernest Satow** concurs in this view.

Mr. **Kriege** proposes the omission of the words, "which is sailing on a purely commercial mission." These words leave in doubt what is not purely commercial. According to the explanations of his Excellency Sir **ERNEST SATOW**, the effect of these words would be to exclude from the benefit of the provision the vessels designated in the proposal of the British delegation under

¹ Annex 48.

² Annex 45.

³ Annex 47.

the name of auxiliary vessels. In any event, such a clause would limit in a very undesirable manner the application and the efficacy of the Convention.

The President recalls the discussions which have taken place on this subject and the construction that must be placed upon paragraph 1 of the proposal.

Mr. Louis Renault concurs in Mr. KRIEGE's suggestion.

Captain Behr likewise is of the opinion that it is difficult to understand the force of these words.

His Excellency Sir Ernest Satow desires to exclude from the benefit of liberation on parole only the crew of a merchant ship carrying munitions of war to the enemy fleet. He is ready to accept any wording which would give satisfaction on this point.

Mr. Heinrich Lammasch proposes that the following formula be substituted for the words whose omission is requested: "as not being in the service of the belligerent fleet," which would have the advantage of covering the case referred to by his Excellency Sir ERNEST SATOW.

Mr. HEINRICH LAMMASCH personally is in favor of the omission of all exceptions. Such an omission removes all doubts, but if there are objections, this new formula which he suggests covers the case of a vessel carrying contraband to an enemy fleet.

Mr. Kriege does not see any difference between an enemy ship carrying contraband to an enemy fleet and one carrying contraband to an enemy army. In both cases the service is the same and any distinction that it should be attempted to establish would be dangerous. That is why the omission is preferable.

His Excellency Mr. Hammarskjöld supports Mr. KRIEGE's request. The British proposal results, as a matter of fact, in treating as war-ships vessels that are not bent on an exclusively commercial mission. Moreover, the very terms of the proposal, "merchant ship" and "captured," would seem to exclude merchant ships that have lost their character as such.

His Excellency Sir Ernest Satow accepts the formula proposed by Mr. HEINRICH LAMMASCH. He is of the opinion that in future wars many neutral vessels will be employed in the service of belligerent fleets, and he does not admit that they may be treated like other merchant ships bent on a purely commercial mission and that their crews shall enjoy the same benefit.

His Excellency Mr. van den Heuvel recalls that the only purpose of his proposal¹ was the extension of the British delegation's proposal. He con-[977] fined himself to reproducing the words "purely commercial." But these words may cause ambiguity. To his mind, they aim to designate merchant ships that engage in acts of hostility and not those that are merely carrying contraband. The British proposal goes so far as to regard as an act of hostility a certain destination of the contraband carried by the vessel. In the opinion of several members this is going too far and overlooks how difficult it will be to prove this destination. It will not be possible to escape arbitrary action. Under these circumstances, the words "purely commercial" should be left out as having too doubtful a meaning and causing certain members to fear that they may appear to be passing upon the definition of auxiliary vessels.

The President proposes that the committee vote on Mr. HEINRICH LAMMASCH's proposal.

Mr. Heinrich Lammasch states that he has merely made a suggestion, the

¹ Annex 46.

purpose of which was to combine two British projects, but in view of the new difficulties which have arisen, he has thought that the best solution would be the omission of any clause containing an exception. However, lest by this omission the project should no longer have the approval of Great Britain, he has suggested the following formula, the meaning of which is more precise: "Vessels not employed in the service of a belligerent fleet." Mr. HEINRICH LAMMASCH lays stress upon the fact that he is merely offering a suggestion, leaving it to the British delegation to present a proposal.

The President asks his Excellency Sir ERNEST SATOW if he desires to take up the amendment suggested by Mr. HEINRICH LAMMASCH, or if he prefers to consent to the omission of the words which have an equivocal meaning.

His Excellency Sir Ernest Satow states that he can not admit that an enemy merchant ship may carry contraband of war anywhere at all, but he accepts the proposal suggested by Mr. HEINRICH LAMMASCH.

The President is of the opinion that equivocal expressions, which would cause embarrassment, should not be used.

His Excellency Sir Ernest Satow agrees to the omission of the words "which is sailing on a purely commercial mission" and to the substitution therefor of the words "which is not in the service of the belligerent fleet."

His Excellency Mr. Keiroku Tsudzuki proposes "in the service of the belligerent fleet or army."

The President puts to vote the omission of the words "which is sailing on a purely commercial mission."

Voting in the affirmative: Germany, United States of America, Austria-Hungary, Belgium, France, Italy, Norway, Netherlands, Russia, and Sweden.

Voting in the negative: Japan.

Not voting: Great Britain.

The President informs the committee of the result of the vote, which is as follows: 10 yeas, 1 nay, 1 not voting.

[1978] He then proposes a vote on the proposal of the British delegation that the following formula be used: "which is not in the service of a belligerent fleet."

Captain Behr states that he will vote against this proposal, which implies acceptance of the British proposal concerning the definition of auxiliary vessels.¹

Mr. Heinrich Lammasch recalls that the British delegation has already had occasion to state that the British proposal concerning the definition of auxiliary vessels was independent of every other proposal. He asks Sir ERNEST SATOW again, however, whether proposal B is independent of the present proposal.

His Excellency Sir Ernest Satow replies that proposal B is suspended for the time being and has no connection with the proposal which the committee is discussing. The present proposal tends to create a privilege which has not been recognized up to the present time and which Great Britain does not wish to recognize except with certain reservations.

The President proposes that the British proposal be voted on.

His Excellency Mr. Hagerup inquires whether this vote is subsidiary to the one which the committee has just cast.

The President replies that by its first vote the committee decided to strike

¹ Annex 2.

out the original formula; by the second it will decide whether to replace it by the new formula in the British proposal.

The committee proceeds to ballot.

Voting in the affirmative: Austria-Hungary, Great Britain, and Japan.

Voting in the negative: Germany, United States of America, Belgium, France, Italy, Norway, Netherlands, Russia, and Sweden.

The President informs the committee that the vote has resulted as follows: 3 yeas, 9 nays.

His Excellency Sir Ernest Satow thinks that this vote changes the situation and if it signifies that a merchant ship that carries coal to a belligerent fleet is to be treated simply as a merchant ship, the British delegation cannot follow this course and withdraws its proposal.

Mr. Guido Fusinato begs Sir ERNEST SATOW not to withdraw his proposal. First of all, it would be well to consider the spirit in which each one voted. Mr. KRIEGE, for instance, gave the reasons for his vote in statements which were indeed in contradiction with the very substance of the British proposal. But Mr. HAMMARSKJÖLD, on the contrary, expressed the opinion that the article as it stands, without the English reading, gives full satisfaction to the British delegation. It should be added that many of those who voted against the British amendment would probably vote in favor of it, if it were necessary for them to choose between the present state of affairs and the British proposal as a whole, which at any rate marks considerable progress.

The President thinks that the question can perhaps be decided together with that of contraband of war, although the situation of an enemy ship in the service of a belligerent fleet belongs to a different category.

[979] His Excellency Sir Ernest Satow recalls the facts in order: the British delegation in the first place proposed that the neutral crew of a captured enemy vessel should be set free; then it supported the proposal of his Excellency Mr. VAN DEN HEUVEL, who asked that this benefit be extended to an enemy crew. In the course of the discussions the expression "purely commercial" was frequently used and its meaning was repeatedly determined. The omission of these words, therefore, leads to the conclusion that they are closely connected with the terms of the definition of a hostile vessel. The British delegation cannot concur in an omission pure and simple without substituting the words which it thanks Mr. HEINRICH LAMMASCH for having so kindly suggested.

Mr. Heinrich Lammasch thinks that the vote on the second proposal¹ was cast under the influence of a misunderstanding. Germany requested the omission of the words "purely commercial," which was voted; then the committee was asked whether it preferred the second formula, and it replied in the negative. The aim of the committee is to discover a formula acceptable to all. The first course did not result in anything practicable, because Great Britain and Japan will not accept it. If the committee wishes to reach a better solution, it can, after it has voted for a first proposal, vote subsidiarily for another and endeavor thus to reach a ground of unanimous agreement. It is preferable, in any event, to reach a partial solution and one that is more equitable than that which is practised at the present time.

His Excellency Mr. van den Heuvel would greatly regret to see a pro-

¹ Annex 47.

posal¹ fail, which Britain has presented and whose scope she had broadened at the request of the Belgian delegation.² Mr. GUIDO FUSINATO and Mr. HEINRICH LAMMASCH have shown very clearly that a misunderstanding exists. If proposal B were accepted, the text of the present proposal, considering the matter from a stricter point of view, would not apply to an auxiliary vessel, since there would no longer be a question of a merchant ship but of a war-ship.

His Excellency Sir **Ernest Satow** sees that he will be forced to make a premature declaration as to proposal B.

His Excellency Mr. **van den Heuvel** thinks that a formula might be discovered which would bring out in relief the necessity of the vessel's being a merchant ship and which would not be—a thing which several members now fear, rightly or wrongly—an indirect sanctioning of the definition of an auxiliary vessel. The committee being disposed to grant rights to the crew of a purely merchant ship that is captured, might it not use a formula similar to that employed in the case of fishing boats? Immunity is granted them only if they are really fishing boats and if they are not taking part in hostilities. We might find a formula embodying this idea.

His Excellency Sir **Ernest Satow** leaves it to his Excellency Mr. **VAN DEN HEUVEL** to find the formula desired. The logical but inadmissible consequence of the refusal to accept the formula "that is not in the service of a belligerent fleet" is to give the crew of an enemy merchant ship which is in the service of the belligerent fleet the same treatment as that given in the case of a vessel bent on a purely commercial mission. Again, it is easy, if there is any doubt as to the purport and interpretation of the terms involved, to consult the protocol of the Convention.

The **President** proposes the expression "not participating in the hostilities."

[1980] Mr. **Guido Fusinato** thinks that this formula allows difficulties of interpretation to remain.

Mr. **Kriege** concurs in this view.

His Excellency Mr. **Hammar skjöld** proposes another solution, for instance, the expression "captured as such." The meaning of the word "captured" will have to be determined by the prize court. If it is not "captured as such," the vessel is no longer a merchant ship and is not subject to the jurisdiction of the prize court.

Mr. **Guido Fusinato** inquires whether the words "captured as such" are not of a nature to exclude vessels carrying contraband of war or guilty of a violation of blockade, that is to say, vessels that are in a situation justifying their capture independently of their enemy character.

His Excellency Mr. **Hammar skjöld** replies in the affirmative.

His Excellency Mr. **Hagerup** suggests a method of procedure. It would be premature for Great Britain to withdraw her proposal under the pretext that it had not obtained a majority vote. The vote is not final. The committee might continue the discussion as if the difficulty had been removed, and Great Britain might reserve the right to withdraw her proposal later on, if no satisfactory solution were reached. The formula, "that is in the service of a belligerent fleet," would seem, in any event, to be preferable to that contained in

¹ Annex 45.

² Annex 46.

the proposal. The report can be made and the question reserved. If no new solution is reached between now and then, his Excellency Mr. HAGERUP will vote for the British proposal.

The **President** also proposes that the committee do not come to an immediate decision. The question remains open and the committee will try to find a formula that will satisfy the British delegation, which, on its side, will not withdraw its proposal.

Mr. **Kriege** shares his Excellency Mr. HAMMARSKJÖLD's point of view and believes that the adoption of his proposal would remove the difficulties.

With reference to paragraph 2, providing for a formal promise, Mr. **KRIEGE** requests that there be added thereto the provision that the captor State shall give its enemy a list of the members of the liberated crew. He hopes that the committee will find this measure just and accept it, as it will result in assuring the practical application of the Convention.

The **President** replies that Mr. FROMAGEOT will prepare a text which will be printed and distributed to the committee before the next meeting.

The **PRESIDENT** asks the committee to pass to the discussion of the project relative to fishing boats. On the basis of the discussion which took place at the last meeting on this point, Mr. FROMAGEOT prepared a text which has been printed and distributed.¹ The committee has before it, moreover, an Italian proposal relative to vessels on a scientific mission² and a Norwegian proposal.³ The **President** requests the committee to pass upon the Italian proposal.

Mr. **Kriege** observes that it confirms a custom already in existence in naval warfare.

Mr. **Louis Renault** asks that this proposal be supplemented by adding boats having a charitable or humanitarian purpose, as, for example, those charged with an evangelical mission.

[1981] Jonkheer **van Karnebeek** joins in this suggestion. He remarks that there are besides in various countries church-boats, which hold religious services among the fishermen and which might be accorded similar treatment to that accorded boats charged with a scientific mission. He proposes the insertion of the word "religious."

Mr. **Fromageot** (reporter) requests that hospital boats for the use of fishermen be included. Their purpose is a charitable one and ought to ensure them immunity.

Mr. **Guido Fusinato** proposes the following form: "charged with a purely scientific, religious or philanthropic mission."

His Excellency Mr. **van den Heuvel** declares himself to be in favor of these various suggestions, but he points out the fact that for vessels charged with a scientific mission there will perhaps be a difficulty in the matter of practical application. In order to benefit by the immunity that is granted them, they must, according to the proposal, be furnished with a safe-conduct; but they will not have foreseen the necessity for this formality if they left before the outbreak of hostilities, and they may, on the outbreak of war, be in distant waters, for instance, in the polar regions.

Mr. **Guido Fusinato** replies that the Government to which these vessels belong will notify its enemy of the real character of the vessel.

¹ Annex 54.

² Annex 56.

³ Annex 53.

Lieutenant Commander **Ivens Ferraz** thinks that the vessel will carry on board papers in which its Government has certified to its real character.

Mr. **Guido Fusinato** thinks that it is only a matter of finding a formula. The essential point is the recognition of the exemption by the belligerent.

Mr. **Louis Renault** remarks that it will only be necessary for the Government to which the vessel belongs to send explicit notice to its enemy. There is, after all, little danger of abuses; vessels on a scientific mission are very few and will seldom be found in waters where hostilities are being carried on.

Mr. **Guido Fusinato** joins in the views expressed by Mr. **LOUIS RENAULT** and proposes that there be added to his proposal a reservation that will meet the objections which have been presented.

The **President** says that paragraph 1 has been adopted. As for paragraph 2, the Italian delegation proposes to seek a formula that will meet the objections which have been presented.

Mr. **Guido Fusinato** is of the opinion that all cases of immunity should be included in a single provision.

Mr. **Heinrich Lammasch** requests that the word "purely" be stricken out. It may happen that certain vessels are charged with a scientific mission and with a commercial mission in addition. Such was the case with the Austrian frigate *Novara*, which obtained a safe-conduct from France and Sardinia during the war of 1859. It had a commercial mission subordinate to its scientific mission. The omission of the word "purely" would permit such a combination again.

Mr. **Guido Fusinato** concurs in this request, which is granted by the committee.

The **President** proposes that the committee pass to the discussion on fishing boats, and reads the draft provision¹ prepared by Mr. **FROMAGEOT**. He [982] requests the committee to come to an agreement upon this text, and then to examine the Norwegian proposal.

DRAFT PROVISION RELATIVE TO FISHING BOATS

Fishing boats engaged exclusively in coastal fishing or in small local business are exempt from capture, as well as their gear, appliances and apparatus.

This exemption ceases to be applicable to them the moment they take part in any way in hostilities.

If military reasons require, the said boats may be ordered away by the belligerent, or may be temporarily detained or requisitioned in consideration of an indemnity.

Boats thus requisitioned may in no case be used in battle.

His Excellency Mr. **Hagerup** remarks that his proposal is to be attached to paragraph 2 of the draft provision.

His Excellency Baron **von Macchio** asks himself whether the phrase "small local business" [*des services de petite navigation locale*] means transportation of farm products [*service d'économie rurale*]. He would prefer the latter formula.

Mr. **Louis Renault** replies that this formula does not express in French his Excellency Baron **VON MACCHIO**'s idea. It would be clearer to say "in agricultural transportation" [*à des transports agricoles*], but small local business [*la petite navigation locale*] includes that class of transportation.

¹ Annex 54.

be better accomplished if it were also stipulated that there should be an indemnity for the loss of the cargo.

Jonkheer **van Karnebeek** inquires whether it is a question of a permanent requisition, or, as in the proposal drawn up by Mr. **FROMAGEOT**,¹ of a temporary requisition. In the latter case an indemnity equivalent to the full value of the boat seems to him excessive. He thinks that there should be still further distinctions and specification.

His Excellency Mr. **Hagerup** replies that the Austro-Hungarian proposal² contemplates only permanent requisitions; detention is another matter.

Lieutenant Commander **Ivens Ferraz** considers that it is rather difficult to determine the amount of the indemnity in advance; the cases may be very different. The indemnity for the full value of the bark might in some instances be too little; it would be too much if the requisition were temporary.

His Excellency Mr. **van den Heuvel** proposes that the common law be applied, that is to say, that reparation be made for the loss actually sustained. If it is a case of expropriation, all the consequences thereof will be considered; if it is a case of use for a short period or a long period, the loss of work will be appraised. It is difficult to lay down absolute rules on this point, and the Norwegian proposal has the drawback of laying down two absolute rules: the first fixing the indemnity uniformly in all cases, whether they are cases of expropriation or of temporary use, at the full value of the boat, plus a supplemental sum; and the second fixing this supplemental indemnity at ten per cent again in all cases indiscriminately. The estimate of the loss and of the reparation is a question of fact, which it is impossible to determine in advance.

Mr. **Louis Renault** is of the opinion that striving to better, oft we mar what's well. The general formula of the draft proposal¹ is preferable to that proposed by his Excellency Mr. **HAGERUP**. The indemnity should always be in proportion to the loss sustained. This loss may be insignificant; it would be in the majority of cases, for it is unlikely that the requisitioning of fishing boats for any great length of time would be a frequent occurrence.

[1985] His Excellency Mr. **Hagerup** replies that this remark is just, if it refers to the general rules of war on land concerning detention; but this is not the case contemplated by the amendment. The German proposal concerning requisitions on land allows neutrals an indemnity exceeding the full value; it would seem that we should not allow more to the enemy.

The **President** notes that two systems confront each other: (1) the indemnity will be fixed according to the common law; (2) it will be fixed as set forth in the Norwegian proposal.

His Excellency Mr. **Hagerup** remarks that, if the committee adopts the theory of his Excellency Mr. **VAN DEN HEUVEL**, it will fix the indemnity upon the basis of the direct and the indirect losses. The question of principle to settle is this: will only the value of the requisitioned article be paid for, or not only the value of the article but the loss of income as well? In the latter case, it would be paying more to enemies than to neutrals.

Paragraph 3 is adopted.

The **President** requests the committee to pass upon the Norwegian amendment.

¹ Annex 54.

² Annex 50.

Mr. **Guido Fusinato** is of the opinion expressed by Mr. **LOUIS RENAULT** that it is not possible to go into details now. He does not think that arguments can be deduced from the rules in force in land warfare, in which requisitions are an infringement of the principle of the inviolability of private property, a principle which is not recognized in naval warfare.

His Excellency Mr. **Hagerup** thinks that the question of principle involved bears upon the question as to whether this indemnity will cover the direct loss or whether it will include the indirect loss as well.

The **President** asks the committee whether it accepts the Norwegian amendment.¹

This amendment is not adopted.

His Excellency Mr. **Hagerup** says that the object of his amendment was to establish certain rules for the determination of indemnities in the matter of requisitions at sea.

The **President** does not believe that the examination of this question is within the scope of the committee.

His Excellency Mr. **Hagerup** replies that the same course might be followed as in the case of bombardment, with regard to which certain rules were laid down.

The **President** is still of the opinion that the point mentioned by his Excellency Mr. **HAGERUP** is not within the scope of the program. It is for the Commission to decide whether it wishes to discuss it.

He proposes that the committee postpone to the next meeting the discussion of paragraph 4, as well as of the proposal which the British delegation is to submit in connection with this paragraph.

¹ Annex 53.

[1986]

EIGHTH MEETING

AUGUST 24, 1907

His Excellency Mr. **Martens** presiding.

The minutes of the fifth meeting are adopted.

The **President** recalls that there was a misunderstanding at the last meeting with regard to the votes on the modification of paragraph 1 of the draft regulations concerning the crews of captured merchant ships.¹ His Excellency Mr. **VAN DEN HEUVEL** has been good enough to draw up a formula which he intends to submit to the committee.

His Excellency Mr. **van den Heuvel** recalls that the committee was in agreement on the substance of the matter and that it was merely a question of finding a formula that would state this agreement. After careful consideration, he has come to the conclusion that he can propose to the committee the following formula as a final paragraph to the proposal proclaiming the freedom of the crews: "The preceding provisions do not apply to ships taking part in the hostilities."

This formula permits a capturing ship not to set free the crews of merchant ships that take part in hostilities. The acts which may be regarded as such participation are not specified by the committee; this is left to the free judgment of the belligerent. His Excellency Mr. **VAN DEN HEUVEL** hopes that this formula will be accepted unanimously by the members of the committee.

Mr. **Kriege** concurs in his Excellency Mr. **VAN DEN HEUVEL**'s remarks and accepts the formula proposed.

His Excellency Sir **Ernest Satow** asks time to think the matter over and assures the committee that he will do his best to accept the formula.

The **President** notes that the committee has raised no objections and that his Excellency Sir **ERNEST SATOW** asks for time for reflection. He thanks his Excellency Mr. **VAN DEN HEUVEL** for having sought and found a formula capable of bringing about agreement.

[1987] Mr. **Kriege** requests that the following sentence concerning communication by the captor State to its enemy of the list of the ship's crew be added to paragraph 4: "Their names will be communicated to it by the belligerent captor."

The committee adopts this amendment.

Mr. **Fromageot** (reporter) reads the text of the new article, to wit:

When an enemy merchant ship is captured by a belligerent, the neutral members of its crew shall not be made prisoners of war.

The same rule shall apply in the case of the captain and officers, if they are subjects.

¹ Annex 48.

or citizens of a neutral Power, provided they formally promise in writing not to serve on an enemy vessel while the war lasts.

The captain and the officers and the members of the crew, who are enemy subjects or citizens, shall not be made prisoners of war on condition that they engage by formal written promise not to undertake any service connected with the war operations while hostilities last.

A belligerent State is forbidden knowingly to employ an individual who has been released under the above-mentioned condition.

The text is approved with the reservation of the formula, proposed by Mr. KRIEGE, concerning notification of the list of the crew.

The President requests the committee to continue the discussion of the draft provision relative to fishing boats.¹

With regard to paragraph 3 Jonkheer van Karnebeek asks whether the words, "in consideration of an indemnity," apply to temporary detention as well as to requisitions. If this is not the case, it will be necessary to modify the wording to make it clear.

Mr. Fromageot replies that the indemnity applies only to requisitions.

His Excellency Mr. Hammarskjöld, however, thinks, if his memory is correct, that in the course of the discussion there has been mention of such temporary use and that the committee has manifested its intention to admit the principle of indemnity in all cases where the owner would naturally suffer loss.

The President is of the opinion that the indemnity applies only to requisitions. A comma might be placed after the word "detained."

His Excellency Mr. Hagerup recalls that from the point of view taken by his Excellency Mr. VAN DEN HEUVEL, the word "indemnity" would include any loss. This point of view seems now to be disputed. As the representative of a country where coastal fishing is an essential means of livelihood to a large proportion of the population, he desires to say that the vague and incomplete rule adopted by the committee with regard to requisitions make the draft rather unacceptable and he reserves his vote on the draft as a whole.

The President replies that the committee has already passed upon the matter. Up to the present time international law has created no obligation with regard to indemnities to be awarded fishermen. The agreement upon this point marks considerable progress. As for the committee's vote, it covered only indemnities for requisitions.

Mr. Guido Fusinato insists upon a modification of paragraph 3 to make it read as follows: "The belligerent may give orders. . . ."

[1988] Mr. Fromageot replies that this remark will be taken into account in the final draft.

With regard to the last paragraph of the draft, his Excellency Sir Ernest Satow recalls that it is the subject of an amendment submitted by the British delegation to prohibit the use of fishing boats for military purposes. The immunity, which it is proposed to grant to fishing populations and their boats, must have as its corollary the obligation not to take part in the war.

The President remarks that the British amendment covers both the relations between fishermen and their Government and those between fishermen and the belligerent. Hence it follows that it may require a modification in domestic laws.

¹ Annex 54.

His Excellency Sir **Ernest Satow** cannot admit that a Government may employ fishermen who enjoy entire immunity in the transportation of munitions of war, in espionage, or in acts of hostility.

His Excellency Mr. **Keiroku Tsudzuki** inquires whether it would not suffice to prohibit the use of fishing barks for surreptitious military purposes. In Japan the build of boats does not vary, whether they are used for fishing or for the transportation of troops. All that can be required is that they be not employed, under the disguise of a peaceful occupation, for military purposes.

His Excellency Mr. **van den Heuvel** thinks that the belligerent should be in a position not to be taken unawares, and that he should know by means of some sign or flag the actual purpose for which the fishing bark is being used.

His Excellency Sir **Ernest Satow** thinks that the prohibition in the matter of fishing boats should also include their crews and that it is the character of the crew especially that should be considered in determining the purpose for which the boat is being used.

His Excellency Mr. **Keiroku Tsudzuki** asks whether by flying the naval flag boats may be employed for military purposes.

His Excellency Sir **Ernest Satow** replies in the affirmative, but lays stress upon the danger in employing fishing boats for military purposes; their immunity demands absolute abstention in this respect.

The **President** proposes that the words, "It is desirable," be used, as they would have the advantage of leaving the States entirely free and of reserving possible modifications necessary in domestic legislation.

His Excellency Sir **Ernest Satow** replies that it is evident that his text may lead certain States to modify their domestic laws, but this was likewise the case with the Geneva Convention.

His Excellency Mr. **Milovan Milovanovitch** believes it quite possible for a State to renounce the employment of fishing populations in military operations. But it may happen that such a population takes part in hostilities. In this case it loses its privilege, and it will lose it whether it acts on its own initiative or by order of its Government.

Mr. **Louis Renault** points out that the difference between the system of his Excellency Sir **Ernest Satow** and that of his Excellency Mr. **Keiroku Tsudzuki** is that his Excellency Sir **Ernest Satow** aims to remove fishermen and their vessels from the field of war operations. It may be that the vessel is employed accidentally. If caught in the act, it goes without saying that [1989] it may be captured; but if it is not caught in the act, is it still subject to capture? That is the question to be elucidated. His Excellency Mr. **Keiroku Tsudzuki**, on his side, asks that the boat be subject to military requisition, but that in such case its use be clearly indicated. It goes without saying that it may then be treated as a war-ship and destroyed.

His Excellency Mr. **Keiroku Tsudzuki** is of this opinion. He again refers to the special character of junks, which have nothing in particular to distinguish them according to the use to which they are put. He adopts Mr. **Renault's** conclusions as to the consequences of their employment for military purposes.

His Excellency Mr. **Milovan Milovanovitch** distinguishes three different situations:

1. Fishing boats take no part in hostilities.
2. They take part therein openly.

3. Finally, they take part therein, but conceal their true character. In the second case they will be treated as belligerents; in the third case they will be treated in the same way as persons on land who take part in hostilities without being belligerents.

His Excellency Sir Ernest Satow proposes that only the first two paragraphs be retained in the draft provision¹ and that the rest be omitted.

His Excellency Mr. van den Heuvel is disposed to accept this suggestion, but it is necessary to look into its consequences. The present law, which gives the belligerent State the right of requisition over all the property of its subjects, will continue; but we must know whether the State has the same right of requisition on the high seas with respect to the barks of its enemy.

Mr. Kriege supports the British proposal.

His Excellency Mr. Keiroku Tsudzuki asks his Excellency Sir ERNEST SATOW whether this provision preserves a prohibition as regards belligerents in the matter of fishing boats.

His Excellency Sir Ernest Satow replies that any participation in hostilities is ground for withdrawal of the immunity.

At the request of Baron von Macchio, the omission of the last two paragraphs of the draft provision is put to vote:

Yeas: Germany, United States of America, Belgium, Brazil, Great Britain, Italy, Japan, Norway, Russia, and Serbia.

Nays: Austria-Hungary, France, and Sweden.

Not voting: Netherlands.

Jonkheer van Karnebeek desires to give his reason for not voting. By voting for the omission of the two paragraphs, he would be sacrificing the indemnity in case of requisition. By voting against it he would be running the risk of aiding in the defeat of the very principle of exemption.

The President proposes that the committee discuss the question of the destruction of neutral prizes. He recalls that the Commission has before [190] it a British² and a Russian³ proposal, and Japanese amendments.⁴ The

Russian proposal, being of a general character, can be used as a starting point in the discussion.

His Excellency Count Tornielli remarks that in the Third Commission the Italian delegation presented a proposal permitting belligerent ships to bring their neutral prizes into a neutral port, to be sequestered there. The attitude of certain States on the destruction of neutral prizes may depend upon the fate of this proposal.

The President proposes that the committee pass upon the general principle and postpone to a later date consideration of its consequences.

His Excellency Mr. Keiroku Tsudzuki states that there has been on the part of the Japanese delegation a slight misunderstanding as to the scope of the British proposal. In Japanese jurisprudence capture and destruction of merchant ships, which are in the service of the State, are ordinarily within the jurisdiction of prize courts. The inference might be drawn that these merchant ships were included in the term "neutral prizes" used in the British proposal. But according to the English proposal, as well as in English jurisprudence, it appears

¹ Annex 54.

² Annex 39.

³ Annex 40.

⁴ Annex 41.

that boats of this character are not included in the term "neutral prizes." The same is true as regards points b and c of the Japanese proposal; these cases also are beyond the scope of the British proposal, since they cannot be considered as prizes already taken. Under these circumstances, the Japanese delegation considers it useless to make amendments to the British draft and withdraws its proposal.

The President makes official note of his Excellency Mr. KEIROKU TSUDZUKI's declarations.

Captain Behr delivers the following address:

In one of the declarations made at the meeting of the Fourth Commission, held on August 7, with regard to the question of the destruction of prizes, occurs the following passage:

The theory that the belligerent has the right to sink a neutral prize was advanced for the first time, if I am not mistaken, in the course of the recent war in the Far East.

I deem it my duty to call the committee's attention to the incorrectness of this assertion. The right to destroy neutral prizes in certain cases of *force majeure* is not an innovation in the domain of the law of nations.

Without attempting a doctrinal and historical discussion, I shall confine myself to recalling certain recent provisions, which seem to me to bear out my point.

The instructions of the French Minister of Marine, dated July 25, 1870, contain the following passage:

If an uncontrollable circumstance should force a cruiser to destroy a prize because its preservation would jeopardize its own safety or the success of its operations, it should be careful to preserve all the ship's papers and other necessary evidence for the adjudication of the prize and the determination of the amount of the indemnity to be awarded to the neutrals whose non-confiscable property may have been destroyed. The right of destruction should be exercised most sparingly.

General Orders No. 492 of the Secretary of the American Navy, dated June 20, 1898, were no less explicit. Paragraph 25 reads as follows:

If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication—such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew—they may be appraised [991] and sold, and if this cannot be done, they may be destroyed. The imminent danger of recapture would justify destruction if there should be no doubt that the vessel was a proper prize.

The Naval War Code of 1900 of the United States of America reproduces, word for word, in its Article 50 the rule which has just been quoted. I have ventured to cite this provision in view of the fact that the Naval Code of 1900 is the most recent codification of international maritime law.

The provisions I have cited make no distinction between enemy prizes and neutral prizes, and I do not see how it could be proved that they refer only to enemy prizes. That is why it is not in the last war in the Far East that we should look for the origin of the right of destruction of neutral prizes in the event of *force majeure*.

If we consult English law, as deduced from its practice, we reach practically similar conclusions.

LUSHINGTON's classic manual of prize law¹ contains the following rules:

Article 303. In the following cases:

1. If the officer who conducts the search reports that the vessel is not in condition to be sent into port for adjudication; or
2. If the commanding officer is not in a position to spare a prize crew to take it into a port of adjudication, the commanding officer shall release the vessel and its cargo without ransom, provided there is no *prima facie* evidence that it belongs to the *enemy*.

Article 304. But if in the two above-mentioned cases there is *prima facie* evidence that the vessel belongs to the *enemy*, the commanding officer will transfer the crew, the ship's papers and the cargo, if possible, and then destroy the vessel.

It is not difficult to prove that these provisions, which at first sight appear to relate only to enemy prizes, are applicable to a very large category of neutral prizes. Thus, according to Article 20 of the same manual, all persons who merely have a commercial residence in enemy territory, regardless of their nationality, are considered enemies. Likewise an enemy vessel sold to a neutral even before the outbreak of the war but in anticipation of this war, and various other classes of vessels, which are considered neutral vessels according to continental doctrine, are considered enemy vessels. It follows from these provisions that in practice British theory recognizes the right to destroy various prizes which from the point of view of continental doctrine are neutral prizes.

Permit me to add to the foregoing certain considerations of a practical nature. Let us suppose that the Convention forbidding the sinking of neutral vessels is concluded and accepted by all. Every prize that cannot be brought before a prize court must be released. I ask you to examine more closely a case which is not at all unlikely to arise and which might occur in any war.

The commanding officer of a cruiser takes a prize. It is an enormous neutral ship with a cargo of cannon, arms, and ammunition destined for the enemy. There is no doubt as to this last point. The ship's papers show this to be so and the captain of the captured ship does not deny it.

[992] Unfortunately the commanding officer of the cruiser finds it impossible to bring his prize before a prize court because an enemy force is in the vicinity, or because the prize, which has sufficient fuel to take it to the enemy, that is to say, to its destination, has not sufficient to take it to the port where the prize court is located, or else because the nearest port of the captor is so far distant that the cruiser itself could not reach it without stopping at neutral ports, which it is forbidden to enter with a prize.

It must therefore, by virtue of our Convention, allow its prize to proceed to its destination. It will be obliged to send to the enemy the material which the latter needs to do damage to the captor's country.

In such a contingency it is compelled to become, as it were, a contractor that supplies the enemy with cannon and ammunition. Do you not think, gentlemen, that you are exposing this poor commanding officer to a very cruel torture, because he will certainly be obliged to say to himself: "The enemy will fire upon my people with these cannon, which I am sending him; perhaps with one of the projectiles which make up the cargo of my released prize he will sink my cruiser?"

Do you not think that he will feel that he would be a traitor to his country

¹ Professor Holland's edition of 1888.

if he obeyed the Convention and sent these cannon and projectiles to the enemy?

And it is with generous and humanitarian impulses that we would make a law that would have such consequences!

And then everybody will see that, while the Second Commission forbids the invading enemy to require of the inhabitants of occupied territory any participation in military operations against their country, the Fourth Commission requires a naval officer in certain cases actually to aid the enemy by sending him cannon, arms, etc., which this enemy needs to do more damage to the officer's own fellow countrymen.

The idea impelling the making of such a law does not to my mind deserve to be called generous and humanitarian. That is why I shall vote against the absolute prohibition of the destruction of neutral prizes, recognizing, however, the right to an indemnity if the prize court should decide that the capture and destruction were illegal.

Mr. Kriege is given the floor and makes the following statement:

The German delegation is in complete accord with the view of the Russian delegation as regards the destruction of neutral ships. It is of the opinion that such destruction is permitted by international law as it stands at present, that it is indispensable from a military point of view, and that it does not demand excessive severity toward the owner of the vessel.

International law is not opposed to the destruction of neutral ships. Allow me to quote on this point the opinion of one of the most celebrated contemporary writers on international law, Professor HOLLAND of England, who in his letters to the *Times*, written during the Russo-Japanese war, upheld the doctrine that the destruction of neutral prizes by a belligerent is lawful warfare. To prove that a rule exists in international law, we can do no better, in my opinion than to show that this rule is followed by the majority of Powers. This is the case with the question before the committee. Professor HOLLAND has stated that the destruction of neutral prizes is or has been permitted by the laws of France, of the United States of America, of Japan, and of Russia. Germany has recognized the right of the belligerent to destroy neutral prizes in the last war. The United States refused to adopt the view of the English Government with regard to the destruction of an English vessel during that war. There are, then, in [993] the laws of most countries provisions permitting the sinking of neutral prizes under exceptional circumstances.

In England they have always appealed in this matter to the opinion of prize judges, especially the opinion of Lord STOWELL in the case of the *Felicity*. It is Professor HOLLAND again who has shown that Lord STOWELL by no means wished to maintain that the destruction of vessels is never permitted. Lord STOWELL merely said that destruction is justifiable only in cases "of the greatest importance to the captor's own State after securing the ship's papers and subject to the right of neutral owners to receive full compensation."

This opinion is shared by the eminent American writer, WOOLSEY, in his *Introduction to the Study of International Law*. Allow me to quote the words of this author:

According to English decisions the destruction of neutral vessels taken as prizes can be justified only by the most cogent reasons of public service.

I could quote a whole series of continental writers who are of the same opinion.

It would appear, therefore, that we must agree that the destruction of prizes is admitted by the present law.

In considering the question *de lege ferenda*, the military reasons indicated at the meeting of the subcommission by Colonel OVTCHINNIKOW of the Admiralty, which Captain BEHR has just set forth, ought, it seems to me, to remove all doubt. The commanding officer of the cruiser would indeed be failing in his duty, if he allowed a neutral ship carrying arms and munitions to the enemy forces to escape, solely for the reasons that he had no means of bringing it into port. In this case military necessities demand imperatively the destruction of the prize, and no one would be willing to dispute the legality of this action.

Allow me, finally, to say a few words about the apprehensions of the owners of sunken neutral vessels. There are only two possible cases: either the capture of the vessel was justified or it was not. Under the first hypothesis the prize court should confirm the prize and the owner will lose his ship, whether it is brought into port or destroyed. In the second case there can be no doubt but that the captor State must answer for the acts of the cruiser and indemnify the owner for the loss resulting therefrom. If the prize has been destroyed, it will therefore be bound to pay the full value of the vessel and of its cargo. The prize court, in declaring the capture invalid, will be called upon to assess the amount of this indemnity. If we succeed, as we hope, in establishing an international prize court, the interests of the owner of the ship and of the goods wrongfully destroyed would henceforth be amply safeguarded.

Such are the reasons, gentlemen, which have led us to support the Russian proposal.

His Excellency Sir Ernest SATOW remarks that Professor HOLLAND, quoted by Mr. KRIEGE, has written two letters¹ on this same subject to the opposite effect. He is also up on the legislation of the various States concerning this matter and knows that the Russian Government has had a very useful compilation distributed, which makes it possible to see the status of questions of maritime law throughout the whole world. Finally, we cannot forget that the [1994] American Regulations of 1899 concerning the destruction of neutral prizes have recently been rescinded. But it is evident from all these laws that a few States cannot by themselves create international law and that the mission of the Conference is to seek a basis of agreement for the future.

The British delegation asks that neutral prizes be released, if they cannot be brought into a port of the belligerent where there is a prize court. It cannot be denied that this proposal which tends to guarantee the existence of the private property of a friendly nation has justice and logic in its favor.

His Excellency Count TORNIELLI calls the committee's attention again to the discussion which is to take place next Monday in the committee of the Third Commission on allowing belligerents the privilege of bringing their neutral prizes into neutral ports. The solution of this question cannot fail to have a great influence on the decision that the States will come to with regard to the destruction of neutral prizes. One of the principal arguments advanced by the partisans of the right of destruction is the inequality that exists in this respect between States which have numerous possessions and consequently ports in all quarters of the world and States which have not this advantage. It is evident that the latter will very often be forced to release neutral prizes which they are

¹ Annex 43.

unable to bring into port. Now, the proposal submitted to the Third Commission will have the effect of removing this inequality and will permit all States to consent to the abandonment of the right to destroy neutral prizes. Prizes will be kept under sequestration in neutral ports until they can be brought before a prize court.

The President thinks that it would, as a matter of fact, be preferable to postpone the discussion on the destruction of neutral prizes until after the question submitted to the Third Commission has been decided. Perhaps it will then be possible to reach an agreement.

His Excellency Sir Ernest Satow thinks that the discussion of the question submitted to the Third Commission will very likely take more than one day; the modification which it is proposed to introduce into the common law requires the creation of a brand new procedure and the elaboration of definite rules as to the duration of sequestration, the documents to be furnished, and the witnesses to be summoned. This innovation will involve a lot of details that must be settled. There is no reason to suppose, in the first place, that all this will be finished in a single day and, in the second place, that neutral States will consent to admit to their ports the prizes which belligerents will want to bring in. Great Britain especially is not at all disposed to allow its ports to be invaded by prizes.

The President proposes that the committee postpone the discussion of the destruction of neutral prizes until after next Monday. The committee will perhaps be in a better position to reach a decision at that time.

[995]

NINTH MEETING

AUGUST 28, 1907

His Excellency Mr. **Martens** presiding.

The minutes of the sixth meeting are adopted.

On the proposal of the **President**, the adoption of the minutes of the seventh meeting is postponed to the next meeting.

The **PRESIDENT** returns to the discussion of the destruction of neutral prizes, which was begun at the last meeting. He recalls that, on the proposal of his Excellency Count **TORNIELLI**, the committee had decided that its decision would depend upon that reached by the second subcommission on the right allowed neutral Governments to admit neutral prizes to their ports, to be kept there under sequestration.

The **PRESIDENT** reads a letter in which his Excellency Count **TORNIELLI** informs him of the result of the deliberations which have taken place on this point in the subcommission. Nine delegations voted in the affirmative and five delegations, which are awaiting instructions from their Governments, made reservations.

Under these circumstances the **PRESIDENT** proposes that the committee exchange views on the subject of the destruction of neutral prizes, in order to clear the way and to endeavor to reach a reconciliation of divergent views. Its vote would be reserved until the second subcommission of the Third Commission had reached a final decision.

Mr. **Guido Fusinato** points out that the decision may modify the situation considerably. It is beyond doubt that the right allowed neutral Governments to admit to their ports neutral prizes will have the effect of reestablishing [abolishing?] the inequality existing between the different States which have more or less numerous colonial possessions and consequently would remove most of the objections which the English proposal has encountered.

The **President** agrees with these observations.

Mr. **Guido Fusinato** adds that the subcommission of the Third Commission, [996] on its side, is awaiting the action of the Fourth Commission on the British proposal concerning the destruction of neutral prizes¹ before coming to a decision.

Mr. **Kriege** asks whether the proposal submitted to the Third Commission imposes upon neutral Governments the obligation to admit neutral prizes to their ports or whether it merely creates a privilege. For his part, he thinks that the proposal should merely allow a privilege and not create a duty.

His Excellency Count **Tornielli** explains that there has never been question of imposing a duty upon neutral States, but that the proposal allows them a

¹ Annex 39.

privilege. The question presents itself thus: The prohibition against bringing prizes into the ports of a neutral State is absolute but for three exceptions: the condition of the sea, damage to the vessel, and, finally, the consent of the neutral State to admit the neutral prize to one of its ports, to be kept there under sequestration.

His Excellency Mr. **van den Heuvel** considers the question from two points of view. In the first place, from the point of view of the principle he cannot recognize that the right to capture a neutral vessel can give the right to destroy it. If it is the case of an enemy vessel, the majority of States claim only in exceptional cases the right to destroy it before confirmation of the capture by the competent prize court. To justify this serious right, it is said that the disputes to be settled are infrequent and simple, and that the interests of the captor always take precedence over the interests of the enemy citizen. Similar exceptions cannot be admitted, if it is a question of neutral prizes. Disputes are then of a delicate nature and of frequent occurrence, and we are confronted with the property of the subject of a State with which we are on good terms; we cannot take such severe measures against him as destruction, so long as the circumstances of the capture have not been adjudicated by the competent court. Therefore, independently of the solution reached by the Third Commission, his Excellency Mr. **VAN DEN HEUVEL** supports the proposal of Great Britain. But we must also consider another point of view, that of the propriety of continuing the discussion now. There are States which hesitate to follow the course mapped out by Great Britain and point out objections based upon practical difficulties. For this reason he believes it preferable to postpone the discussion, which may take a different turn, depending on the solutions reached by the other Commission.

His Excellency Count **Tornielli** remarks that the Conference is, as a matter of fact, indivisible and that the solution of questions will be indefinitely deferred, if the Commissions wait for each other's decisions.

Mr. **Kriege** remarks that from a legal point of view his Excellency Mr. **VAN DEN HEUVEL**'s theory on the right of destruction of neutral prizes does not seem to be well founded. The proposition that a neutral prize should be spared because it is the property of an individual is not correct; the same thing might be said with regard to an enemy prize, which, until it is condemned by a prize court, is not the property of the captor State, but of an individual. When the capture of neutral property is admitted under certain conditions, like that of enemy property, no distinction should be made between them.

His Excellency Mr. **van den Heuvel** thinks that property belonging to an individual who is the subject of a neutral State may not be treated like that of an individual who is the subject of an enemy State.

[997] Mr. **Kriege** replies that these considerations are of a political rather than a legal nature.

His Excellency Mr. **van den Heuvel** thinks that neutral prizes and enemy prizes should be considered differently and, if it is regarded as permissible in certain cases to deprive enemy prizes of the guarantee of a legal decision before disposing of them, in no case shall we be justified in disposing of neutral prizes without first having them adjudicated by a prize court.

Mr. **Guido Fusinato** points out that there is nevertheless a difference in their treatment. In the case of a neutral vessel there may be an indemnity, if the

prize court so decides. If, on the contrary, an enemy ship is involved, it will have no right to an indemnity. It must not be forgotten that the right to sink does not exclude an indemnity.

Mr. **Kriege** says that as a matter of fact the prize court will in all cases have the final word. It must even release an enemy prize if by virtue of treaties or of the laws of the captor State the seizure of the vessel was not legal, for example, in case the vessel shall have been captured in contravention of days of grace allowed it.

The **President** points out that the impartiality of the prize court will be a guarantee to neutrals. The Permanent Court, which will sit at The Hague in time of war and which will perform the duties of a court of appeal, will be the best of guarantees. The President asks whether, even in case the neutral Government should accept sequestration, there will nevertheless be cases in which the belligerent will have the right to destroy.

Captain **Behr** replies that it is certain that the proposal presented to the Third Commission will have the effect of restricting cases in which destruction will be a necessary measure, but it will not remove them all; there will remain, to be specific, the case of proximity of the enemy and that of a cargo of absolute contraband.

Mr. **Kriege** thinks that the proposal submitted to the Third Commission will not be sufficient to do away with the destruction of neutral prizes: (1) because it is not certain that neutral ports will be willing to be places of sequestration; (2) because there are cases in which it is impossible to bring a vessel into a neutral port—for example, if the ship is in such bad condition as to render it impossible to bring it in or if the approach of enemy forces or other reasons threaten its recapture, or if the crew of the war-ship is insufficient to man the vessel adequately.

The **President** asks whether the exceptions could not be set forth in a provision.

Captain **Behr** proposes the formula used in the first paragraph of the Russian proposal,¹ which is as follows: "The destruction of a neutral prize is prohibited except in cases where its preservation might endanger the safety of the capturing vessel or the success of its operations."

His Excellency Count **Tornielli** states that according to the explanatory statement in the Russian proposal, the committee is decided as to the reasons against the adoption of the British proposal and to the difficulties with regard to an agreement on the exceptions. He asks whether a distinction might not

be made according as the neutral vessel is or is not loaded with absolute [998] contraband. He is not making a proposal but merely a suggestion. As

for the vote of the Italian delegation, it will depend upon the way in which the second subcommission of the Third Commission receives its proposal. Might we not reach a solution by uniting the two committees, that of the Fourth Commission and that of the subcommission of the Third Commission?

The **President** proposes that a small committee be formed, composed of members appointed by the two committees.

His Excellency Sir **Ernest Satow** states that he has no instructions which will allow him to come to a decision on the question. Such instructions cannot reach him inside of eight days. It must not be lost sight of that this is a matter

¹ Annex 40.

of changing rules which have been in existence for more than half a century and which aimed to put an end to abuses arising from the stay of prizes in neutral ports, where they were forgotten.

His Excellency Count **Tornielli** replies that the reform proposed is not so much at variance with the regulations of Great Britain. It must indeed be admitted that many things have changed in the past century, that the conditions of maritime commerce are no longer the same, and that, above all, in spite of the hesitancy we may have, the new practice is not in absolute opposition to the regulations.

His Excellency Sir **Ernest Satow** thinks that it will be difficult to eradicate ideas which have dwelt in the heads of statesmen and sailors for so long a time.

The **President** proposes that the discussion be postponed until the British delegation has received instructions. He hopes soon to have good news of them.

His Excellency Sir **Ernest Satow** also awaits good news in the matter of the opposition to the prize court and the abolition of the right of destruction.

The **President** says that, if the present Conference should be unable to agree upon the essential principles of international maritime law, the international prize court would not be in a position to operate regularly and to establish a system of jurisprudence by its decisions. On what would its judgments be based in the absence of principles of law formally recognized by the States? Would they be based on the "principles of international law," which are so contradictorily set forth by different writers? I am firmly convinced, concludes the **President**, that the creators of the international prize court at The Hague are morally obliged to give it a legislative foundation upon which it can base its decisions. The lack of such a foundation will have as its inevitable consequence a formidable and fatal diversity of judgments, which will cause the most dangerous confusion in international relations.

Rear Admiral **Sperry** considers it indispensable to come to an agreement on the question of contraband of war, which is the basis of the question of the destruction of neutral prizes.

The **President** esteems this an additional reason why the special committee should reach an agreement on contraband.

The **PRESIDENT** proposes that the committee now examine the application to naval warfare of the rules applicable to war on land. This application [999] exists in the matter of the Red Cross and the Declaration of 1856. We must see whether there are in the 1899 Convention rules that can be applied to war at sea. It would seem, however, to be useless to enter into a very detailed examination. Chapter I among others relates to belligerents. Its application leads us back to the question of conversion; but the committee has reached no agreement on this point. The State therefore remains free to effect mobilization as it has done up to the present time.

His Excellency Count **Tornielli** remarks that this question has only been discussed in the committee. The Commission, in which a greater number of States is represented, has not passed upon it.

The **President** replies that the committee will make its report to the Commission and that the filing of this report may be made the occasion of further discussion.

Jonkheer van Karnebeek recalls that if it has been impossible to reach an agreement in the matter of the place of conversion, there are other points as to

which an agreement seems to be possible. There is, in the first place, the question of reconversion. In the committee the general opinion was that it should be prohibited. In the second place, there are the conditions necessary for conversion. The **PRESIDENT** noted at its fifth meeting the general agreement of the Commission with regard to these conditions. They are very important, since they establish the necessary guarantees that the right of capture and of search shall not be exercised except by the agents of the belligerent State. That is the purport of the Declaration of Paris of 1856.

His Excellency **Mr. A. Beernaert** thinks that it would be well to apply to war at sea certain of the rules adopted for war on land, for example that prohibiting the shooting of a belligerent prisoner. He proposes that the committee charge **Jonkheer van Karnebeek** to make a report on these various points.

His Excellency **Mr. Keiroku Tsudzuki** does not believe that there is unanimity on the question of reconversion.

His Excellency **Sir Ernest Satow** thinks that all the questions raised by conversion depend upon that concerning the place where it may be effected. Great Britain admits that conversion may be effected only in a national port, in the port of an ally if the latter consents thereto, or in an occupied port. She admits that reconversion may take place in these same places. A war-ship will always be recognized by its build, by the naval flag, by the commission of its commanding officer.

The **President** likewise is of the opinion that, as regards conversion, the question of place is a vital one and that any discussion that does not take it into consideration would be fruitless.

Jonkheer van Karnebeek admits that there may be a certain relationship between the question of place and that of reconversion. He will not insist upon that point. But he cannot see in what way the conditions required of the commanding officer and crew depend upon the question of place. It is a question of ensuring a just application of the Declaration of Paris and of protecting private property at sea from the possibility of the illegitimate exercise of certain exorbitant rights which the present Conference has not been able to abolish.

He recalls that the committee has up to the present moment very little to present to the Commission. The only real progress made is the rule relating to the crews of captured enemy merchant ships. We might also cite [1000] the rule concerning merchant ships on the outbreak of hostilities. But this rule is in substance merely a *varu*, and we shall have to see whether detention, mentioned therein as a substitute for capture and confiscation, will not become the normal measure which will always be applied in future on the outbreak of hostilities. This would be a backward step. **Mr. van Karnebeek** thinks that under these circumstances the committee cannot allow itself to neglect the points indicated concerning conversion on which it would seem to be possible to reach an agreement.

The **President** replies that nothing prevents the placing of the discussion again on the order of business. Several of the great Powers believe that the question of place is a vital one and would not wish to discuss the other questions to which conversion gives rise.

The **PRESIDENT** is in favor of the proposal to charge **Jonkheer van Karnebeek** with the preparation of a report, under the direction of his Excellency **Mr.**

BEERNAERT, on the application to war at sea of the provisions of the rules adopted for war on land.

Jonkheer **van Karnebeek** states that he is ready to draw up this report and he appeals to the kindly aid of Mr. BEERNAERT who has presided over the work of the Second Commission relating to the laws and customs of war on land.

His Excellency Mr. A. Beernaert calls the committee's attention to the advisability of securing the collaboration of a technical expert.

Mr. Guido Fusinato asks whether the committee might not vote on the Italian proposal concerning the immunity to be granted scientific vessels.¹

The President reads the Italian proposal:

Enemy ships engaged in scientific, religious, and philanthropic missions shall not be captured.

The State to which the vessel belongs must notify the opposing State to this effect, which latter shall furnish a safe-conduct indicating the conditions of exemption and shall take the necessary steps to assure its being duly respected.

Mr. Guido Fusinato remarks that the words "enemy vessels" include both war-ships and merchant ships.

His Excellency Mr. Keiroku Tsudzuki asks what the guarantees of the belligerent are, if these vessels change the character of their mission.

Mr. Guido Fusinato replies that they will come under the common law and will be liable to capture. Besides, if the belligerent has any doubts, he will not deliver them a safe-conduct.

Mr. Fromageot (reporter) requests a correction in the wording. The proposal says that the State must cause the safe-conduct to be delivered [*faire parvenir*]. In some cases it will be difficult to fulfill this requirement.

Mr. Guido Fusinato remarks that this was inserted to meet the desires of Mr. VAN DEN HEUVEL. The State will furnish a safe-conduct and at the same time, as the proposal sets forth, it will take the measures necessary to [1001] secure due observance of the exemption; that is to say, it will give instructions to its war-ships.

Mr. Fromageot asks to whom the safe-conduct will be delivered, to the State or the vessel.

Mr. Guido Fusinato replies that the safe-conduct is the reply to the notice and as such should be delivered to the State to which the vessel belongs.

His Excellency Mr. Keiroku Tsudzuki insists that this vessel, which may be a war-ship, shall not be permitted to commit any act of hostility.

Mr. Guido Fusinato explains that the safe-conduct will contain the necessary reservations and will specify the conditions on which it is delivered.

Captain Behr proposes the addition of the following phrase: "on condition that they shall not change their character while the war lasts."

His Excellency Count Tornielli replies that the State that gives the safe-conduct is free to determine the conditions.

His Excellency Mr. Keiroku Tsudzuki is in favor of Captain BEHR's formula.

Mr. Guido Fusinato sees no difference and feels that the reservations contained in the safe-conduct will give greater guarantees because they can take into account the special circumstances.

¹ Annex 56.

Jonkheer van Karnebeek proposes that "may furnish" be substituted for "shall furnish."

Mr. Guido Fusinato is opposed to this change, the delivery of a safe-conduct being a legal obligation.

His Excellency **Mr. van den Heuvel** asks whether the safe-conduct may contain a reservation corresponding with the amendment of Captain **BEHR**.

Mr. Guido Fusinato replies in the affirmative, adding that that is why he considers the amendment useless.

Captain Behr remarks that his amendment will apply in case the vessel shall have benefited from the exemption before receiving its safe-conduct.

His Excellency **Sir Ernest Satow** proposes the addition of the formula used in connection with fishing boats, which lose their immunity when they take part in hostilities.

His Excellency **Mr. Keiroku Tsudzuki** asks whether the safe-conduct is one of the conditions of exemption.

Mr. Guido Fusinato replies that the moment the destination of the vessel is ascertained it receives the benefit of the exemption, even though the safe-conduct should not have been delivered to it.

His Excellency **Mr. Keiroku Tsudzuki** inquires whether the giving of notice is an obligation.

Mr. Guido Fusinato replies that it is; the safe-conduct is the reply thereto, with the reservations made by the belligerent.

[1002] His Excellency **Mr. Keiroku Tsudzuki** and **Captain Behr** request that the amendment be inserted after the first paragraph.

His Excellency **Sir Ernest Satow** remarks that the various prescriptions are a step backward from what has been done in practice. He recalls that in the eighteenth century the vessel commanded by **LA PEYROUSE** was not captured and that no safe-conduct was required. These details therefore seem to be useless; the first paragraph is sufficient in itself.

Mr. Guido Fusinato replies that nevertheless vessels charged with religious or philanthropic missions may in certain cases be connected with military operations. This and other considerations might render advisable the express maintenance of the principle of a safe-conduct. But taking into account the difficulties in the way, he is not opposed to his Excellency **Sir ERNEST SATOW**'s proposal.

His Excellency **Sir Ernest Satow** replies that there are in England only two vessels that have a religious mission. Vessels of this kind usually belong to missionary societies which will not change their character.

The President is of the opinion that the report should mention the conditions upon which the privilege of immunity is granted and preserved.

His Excellency **Mr. A. Beernaert** requests that the word "enemy" be stricken out, since the vessels in question cannot be considered enemy vessels.

His Excellency **Sir Ernest Satow** proposes the phrase "flying the flag of the enemy State."

Mr. Guido Fusinato has no objection to this change of wording, but he remarks that the characterization "enemy" has always been used to designate vessels belonging to enemy nationality.

The President invites the committee to vote on the wording of the first paragraph of the Italian proposal:¹

¹ Annex 56.

Yeas: United States of America, Austria-Hungary, Belgium, France, Great Britain, Italy, Norway, Netherlands, and Sweden.

Nays: Germany and Russia.

Not voting: Japan.

The **President** notes that nine States have voted in the affirmative, two in the negative, and one abstained from voting.

Mr. **Guido Fusinato** remarks that the States voting in the negative did not intend to vote against the question of principle, but against the wording of paragraph 1 of the proposal.

Mr. **Kriege** states that he accepts the wording adopted by the majority. [1003] His Excellency Count **Tornielli** proposes that a vote be taken on the two remaining paragraphs of the proposal and then on the proposal as a whole.

Captain **Behr** concurs in the wording which has been adopted by the majority.

The **President** notes that the committee is in agreement upon the principle and that it disagrees only in the matter of wording. The report will mention this unanimity with regard to the principle.

Mr. **Fromageot** requests that "religious or philanthropic" be substituted for "religious and philanthropic."

His Excellency Sir **Ernest Satow** recalls that during a war in the eighteenth century an English vessel in distress entered a Spanish port, which was an enemy port. The Spanish authorities allowed it to make repairs and to put to sea again. Might we not at the present time grant immunity to ships in distress which enter an enemy port?

Mr. **Fromageot** thinks that this question is within the province of the Third Commission.

His Excellency Sir **Ernest Satow** replies that it is not a question of a warship entering a neutral port, but entering an enemy port.

Mr. **Guido Fusinato** finds this proposal too chivalrous.

The **President** proposes that the committee return at its next meeting, which will take place on Friday at three o'clock, to the question of days of grace and the conversion of merchant ships into war-ships.

[1004]

TENTH MEETING

AUGUST 30, 1907

His Excellency Mr. Martens presiding.

The President inquires whether the committee has any objections to present in the matter of the minutes of the seventh meeting.

These minutes are adopted.

The President asks the same question with regard to the minutes of the eighth meeting.

His Excellency Sir Ernest Satow says that he has some observations which he expects to present at the next meeting.

The President asks the committee to postpone to a subsequent meeting the discussion of the question of days of grace or of a sufficient period of grace, with regard to which the British delegation has not yet received instructions.

Mr. Fromageot (reporter) remarks that the draft convention on days of grace contains a manifest error. The entire second line of the first paragraph should be omitted, as it duplicates the last paragraph.

The President takes up the discussion on the conversion of merchant ships into war-ships. He recalls that the keystone of the first discussion was the place where conversion might be effected. The committee was unanimous in thinking that it might take place in national ports, in the ports of allies, in ports actually occupied; but it was unable to come to an agreement upon the question whether mobilization might take place on the high seas. The vote on Mr. GUIDO FUSINATO's proposal resulted in 7 yeas and 9 nays. Under these circumstances, not only was the question left open, but several of the Powers had thought it useless to pursue the study of the question. Since then, however, a desire has manifested itself to reach an agreement, which would contain provisions seeking to give neutrals all the guarantees which the Declaration of Paris aimed to give them.

[1005] Mr. Guido Fusinato recalls that the Italian delegation proposed an intermediate solution of the question of conversion on the high seas. This proposal draws a distinction between merchant ships which left the last port at which they touched before the outbreak of hostilities, and those which left such port thereafter. Conversion on the high seas is permitted in the case of the first; it is prohibited in the case of the second. The committee might discuss and vote upon this solution, which recommends itself because of its compromise character, provided all or nearly all of the delegations are ready to accept it.

The President reads the Italian proposal.¹

Jonkheer van Karnebeek asks whether conversion will be permitted in

¹ Annex 4

neutral ports in the case of vessels which left the territorial waters of their country before the outbreak of hostilities.

Mr. Guido Fusinato thinks not.

Jonkheer van Karnebeek remarks that this follows from the argument *a contrario*.

Mr. Guido Fusinato replies that the proposal might be formulated in positive terms.

The President asks what the conditions for conversion will then be.

Mr. Guido Fusinato replies that they are the subject of the Austro-Hungarian proposal.¹ He remarks that merchant ships which left the port at which they last touched before the outbreak of hostilities will perhaps have to go a long way and overcome many difficulties in order to reach one of their national ports, while others will not have to make a journey or surmount any difficulties in their conversion.

His Excellency Lord Reay states that he cannot accept the intermediate proposal of Italy, as it does not give sufficient guarantees to neutrals.

His Excellency Mr. Keiroku Tsudzuki concurs in the opinion of his Excellency Lord REAY. Neutrals are in a state of uncertainty as to when conversion and when reconversion take place, if indeed the latter is permissible.

The President replies that if conversion is permitted on the high seas, it will be made dependent upon conditions that will aim to give neutrals all the guarantees desirable.

His Excellency Mr. Keiroku Tsudzuki remarks that neutrals should be in a position to know what vessels may exercise the right of search.

Mr. Guido Fusinato replies that as soon as conversion has taken place, the vessel will fly the naval flag. There is, moreover, nothing to prevent notifying the enemy of the conversion.

The President thinks that there will continue to be doubt as to whether these vessels left the port at which they last touched without having knowledge of the outbreak of hostilities.

Mr. Guido Fusinato does not consider this circumstance of any importance in the solution of the question.

[1006] The President states that the report will make mention of the divergent opinions expressed on this point in the committee, which keeps the question *in statu quo*.

His Excellency Mr. Hammarskjöld calls the committee's attention to the importance of certain questions which the conversion of merchant ships into war-ships present, independently of the place where it may be effected. The committee must not lend any semblance of truth to the accusation, which has been made, of attempting to reestablish privateering in an indirect way. To prevent any misunderstanding on this point, it is essential to make clear the difference between converted ships and privateers.

Annex 8 contains a certain number of proposals on the subject, which form a body of important rules that it is easy to reconcile with one another; for example, the obligations concerning the permanence of the conversion and the restrictions placed upon the commanding officer and crew.

Although these divers rules cannot for the moment form the subject of a

¹ See Mr. HEINRICH LAMMASCH's declaration at the second meeting of the Commission, *ante*, p. 747 [745].

complete convention, it may be useful to set them forth in order to dissipate any doubts to which they may still give rise. The result of the labors of the Conference in the matter of war on land is not so important that we need not mention the rules upon which agreement has been reached. His Excellency Mr. HAMMARSKJÖLD therefore reiterates the proposal to take up again the discussion of the conversion of merchant ships into war-ships, with the exception, of course, of the place where conversion may be effected.

The **President** remarks that everybody is agreed that there must be no resurrection of privateering and that all measures must be taken to prevent it; but the committee has received no instructions to make any changes in the regulations concerning navigation on the high seas and in straits. Moreover, if the right to effect conversion on the high seas is not recognized, it would be difficult to take part in a discussion which sets aside a vital question.

Jonkheer van Karnebeek, referring to what he said at the last meeting, concurs in the opinion expressed by his Excellency Mr. HAMMARSKJÖLD. He would like, however, to supplement his argument from another point of view. He thinks that it would be not only useful but also possible to stipulate that conversion is prohibited in neutral ports, without affecting the general question of place, which must remain open. Conversion in neutral ports seems to him to fall under the regulation of neutrality, which subject is in the hands of the second subcommission of the Third Commission. It could be laid before that subcommission.

The **President** is of the opinion that the question is within the province of the Third Commission.

Jonkheer van Karnebeek remarks that the project¹ elaborated by that Commission contains no stipulation expressly forbidding conversion in neutral ports. The Fourth Commission might call the Third Commission's attention to this.

His Excellency Mr. Keiroku Tsudzuki thinks that the question of reconversion is closely related to the question of the place where conversion may be effected. The only object that the committee has in mind is to diminish, [1007] so far as possible, the difficulties caused to neutrals by unrestricted conversion and reconversion. In so far as Japan is concerned she cannot admit the prohibition of reconversion as long as the war lasts and she prefers to decrease the difficulties above referred to by restricting the places where conversion or reconversion may take place to the restriction of the length of time which these vessels must observe before they may be reconverted.

His Excellency Mr. van den Heuvel concurs in his Excellency Mr. HAMMARSKJÖLD's observations. Omitting the designation of the place of conversion, the committee can settle certain points of real importance which can be made the subject of an agreement.

Jonkheer van Karnebeek thinks that the question of giving private property at sea guarantees against the reintroduction of privateering in a disguised form by making the belligerent State entirely responsible for the converted vessel is important enough in itself not to be overlooked by the committee.

The **President** states that aside from the question of place, which is left open, there are certain proposals made by various delegations.

¹ See Third Commission, annex 65, *ante*, p. 733 [731].

Mr. Guido Fusinato recalls that in the matter of the command of the vessel the Italian and Netherland proposals are the same in different forms.

Jonkheer van Karnebeek states that he concurs in the Italian formula.

Captain Behr replies that the condition imposed by the Russian delegation does not refer to the former, but to the present situation.

Mr. Guido Fusinato thinks that the idea is in substance the same.

Mr. Kriege says that a reserve officer may be involved. The Italian formula is preferable as it leaves no room for doubt.

His Excellency Mr. Hagerup agrees with Mr. KRIEGE's observation. In Norway the majority of naval officers are reserve officers who serve in the merchant marine and who, if war should break out, would be called back to active service.

The President notes that the Italian formula is accepted.

In order to avoid any ambiguity, Mr. Fromageot proposes the following formula: "An officer in the service of the State, commissioned by the State and under its control."

The committee concurs in this suggestion.

The President reads the Italian,¹ the Netherland,² and the Russian³ proposals concerning the conditions imposed upon the crew.

Jonkheer van Karnebeek and Captain Behr state that they concur in the Italian proposal.

Mr. Fromageot requests that the whole crew be not required to be a naval crew.

Jonkheer van Karnebeek states that he concurs in the Italian proposal, if the committee finds that the conditions imposed by the Netherland proposal are too severe.

[1008] Mr. Guido Fusinato replies that the Netherland formula requires a partially naval crew, but that the Italian formula may very well admit of a merchant crew.

Mr. Fromageot asks whether the crew should not be required to wear certain insignia, as in the case with belligerents on land.

Mr. Guido Fusinato says that the question is of less importance at sea; it is the flag and the ship which give the crew its belligerent character.

Mr. Fromageot thinks that in the case of a mobilized vessel it is indeed the flag that gives it the character of a belligerent; but if this vessel exercises the right of search, if it lowers a boat, it may not be inadvisable for the sailors to have a distinctive mark.

Mr. Guido Fusinato says that the guarantee of the belligerent character of the sailors will be the fact that they come from a war-ship. The boat itself should, as a matter of fact, fly the pennant.

The President is of the opinion that distinctive insignia are necessary on land where there is individual fighting, but at sea it is not of equal importance.

His Excellency Lord Reay would have the boat required to carry the naval pennant.

The President asks whether the British delegation desires to discuss proposals A and B on the subject of registration.

His Excellency Lord Reay states that he renounces discussion.

¹ Annex 4.

² Annex 5.

³ Annex 3.

His Excellency Mr. Keiroku Tsudzuki asks, in connection with the Russian proposal concerning registration, how this registration will be effected when it is maintained that conversion shall take place on the high seas.

Captain Behr replies that it is effected by an order of the day published in the *Official Journal*.

His Excellency Mr. Keiroku Tsudzuki then remarks that conversion on the high seas cannot be simultaneous with the publication of the order of the day.

His Excellency Lord Reay asks that registration take place "as soon as possible."

Captain Behr accepts this suggestion.

His Excellency Lord Reay asks that this acceptance appear in the minutes:

Mr. Kriege proposes that this condition be stipulated in the text of the article. That does not mean, however, that conversion depends upon the registration required by the text, for it may be effected at a time when the Government is unaware of the fact.

In connection with the condition of flying the flag, the President reads the Netherland and Russian proposals.¹

His Excellency Mr. Keiroku Tsudzuki does not consider all these details necessary.

[1009] Mr. Fromageot remarks that the flag is a distinctive and visible sign of the war-ship. That is the best guarantee that neutrals can have.

Mr. Guido Fusinato says that the distinctive sign of war-ships will be determined by the laws of the State to which the vessels belong.

Jonkheer van Karnebeek states that he supports the Russian proposal,² which differs from the Netherland formula only from a technical point of view and not fundamentally.

Mr. Fromageot would prefer "of the State of their nationality."

The President notes that the committee has no objection to offer to the Russian proposal.

Mr. Fromageot asks whether the mobilized ship should not have documents proving its mobilization.

Captain Behr replies that it is not the custom of his Government to furnish such documents.

Mr. Fromageot states that the French Government delivers a commission to the officer and a letter of requisition for the ship.

His Excellency Mr. Hammarskjöld remarks that merchant ships always carry documents attesting their origin. A war-ship is not revealed by its outward appearance; it must carry papers proving its character as a war-ship, which will settle the question of fact. The absence of ship's papers might lead to unpleasant disputes and discussions as to the right to fly the flag.

Jonkheer van Karnebeek calls the committee's attention to the Netherland proposal³ relating to ship's papers, which meets the wishes of France and Sweden. It requires the converted vessel to carry a commission furnished by the competent national authority.

The President remarks that Mr. FROMAGEOT'S observation, which is answered by the Netherland proposal, belongs rather to the discussion on ship's papers

¹ Annexes 5 and 3.

² Annex 3.

³ Annex 5.

Mr. **Fromageot** explains that there will be no doubt in the case of ships which have the outward appearance of war-ships and fly the naval flag. But it might be otherwise in the case of converted merchant ships which, in spite of their conversion, retain their original outward appearance. The commanding officer of a merchant ship which encounters such a vessel and which is exposed to the right of search and even to capture, should have the right to require proof of his authority from the officer of the converted ship.

Captain **Behr** replies that a pirate ship may very easily have the outward appearance of a war-ship and produce forged papers. It is not customary for the Russian Government to furnish a commission. On the other hand, there are vessels, like transports, which have a permanent military character and the same outward appearance as merchant ships.

His Excellency Mr. **Hammar skjöld** remarks that a vessel, which has undergone conversion and comes into a neutral port, naturally may no longer [1010] present its former papers; it must produce new papers. Therefore there are circumstances, aside from the exercise of the right of search, in which the converted vessel must have ship's papers.

Captain **Ottley** shows what will take place in practice. When a war-ship intends to stop and search a merchant ship, the commanding officer, before lowering a boat, will fire a gun. The firing of a gun is the best guarantee that can be given. Merchant ships do not carry guns. The presence of guns and the commission of the captain give neutrals all the guarantee necessary.

His Excellency Mr. **Keiroku Tsudzuki** remarks that, if conversion has taken place in an occupied port, it is possible that the ship may not have any papers.

His Excellency Lord **Reay** insists that the commanding officer must have a commission.

The **President** inquires whether the commanding officer of a captured vessel has the right to ask the commanding officer of the war-ship to show his commission.

Captain **Ottley** replies that the officer must convince the commanding officer of the merchant ship of his authority by telling him his name and the name of the vessel that sent him, but he is not called upon to produce any certificate.

Captain **Behr** states that the presence of guns on board the vessel is the best argument.

Jonkheer **van Karnebeek** replies that the presence of guns does not prove the legality of the vessel's conversion.

His Excellency Mr. **Keiroku Tsudzuki** asks whether in case conversion takes place in a remote or occupied port, the telegram ordering it can take the place of a commission.

His Excellency Mr. **Hammar skjöld** does not think that cannon are a legal argument.

Mr. **Kriege** points out that the officer commanding the converted ship will ordinarily be able to prove that he is a naval officer of his country, but if conversion is effected on the high seas, it will be difficult to produce a commission or a telegram. That is why he concurs in Captain **Ottley's** opinion that the production of a certificate is not necessary.

Rear Admiral **Sperry** says that the authorities of the Government of the

United States do not always commission a war-ship in writing; such commission may be given orally.

Mr. Fromageot insists that all officers shall have commissions from their Government.

Jonkheer van Karnebeek remarks that this is not the kind of commission that is mentioned in the Netherland proposal, which latter is a document certifying to the conversion itself.

Mr. Fromageot believes that it is necessary to require the officer's commission without the designation of the vessel that he commands.

[1011] Captain Behr thinks that, if the converted vessel enters a port, the consular or diplomatic representative can prove the real character of the vessel. The commission may very easily be a forgery.

Mr. Fromageot inquires whether the committee is of the opinion that notification should not be required.

His Excellency Lord Reay declares himself ready to adopt the Netherland proposal,¹ if it mentions the captain's commission.

Jonkheer van Karnebeek points out that the Netherland proposal refers to something different from the commission of the commanding officer. However, in view of the opposition that this proposal has met with, he declares himself to be ready to accept the amendment proposed by the honorable delegate of Great Britain. He prefers the commission furnished the captain to any other solution requiring no documentary evidence.

His Excellency Mr. van den Heuvel remarks that difficulties may arise if the officer finds it impossible to furnish the papers in question. If the commanding officer of the merchant ship does not trust the pennant of the converted vessel, if he demands further proof, the officer should be able to furnish it by all possible means. We should stop our playing with circumstances and follow rather the system set forth by Captain OTTLEY.

Captain Ottley is further strengthened in his opinion because a converted vessel is subject to the same rules as a war-ship.

The President is of the opinion that the committee should not enter into too many details and that it should be left to the legislation of each country to regulate the question.

Jonkheer van Karnebeek asks whether it is understood that the officer commanding the converted vessel will not be obliged to produce a document attesting the conversion.

Mr. Guido Fusinato supports the British proposal, which requires the commanding officer's commission.

Captain Behr remarks that this requirement is an innovation. Up to the present time the obligation of having papers and of furnishing proof has not been recognized.

Mr. Guido Fusinato thinks that a converted vessel must prove its character as such, and he supports the British proposal. A merchant ship cannot effect conversion of itself. The war-ship which brings it its commanding officer and equipment can also bring the commission.

His Excellency Lord Reay states that when certain Powers permit conversion on the high seas, the commission must be the evidence of such conversion.

¹ Annex 5.

The President thinks that according to the proposal of the Netherlands, amended by Great Britain, and accepted as amended by the Italian delegation, it is the national laws which determine the competent authority to furnish the commission.

Mr. Kriege states that it is not always possible to have a commission when the conversion is effected on the high seas. It sometimes happens that the officers have received their orders at the last moment and have not a [1012] special commission. It might be necessary to substitute another officer for the captain who has received the commission. The paper filled out with his name will then be of no value. The paper may also be lost. It would seem to be evident that the military character of the vessel cannot be made to depend upon the presence of such a document on board.

His Excellency Lord Reay states that his Government cannot, under any circumstances, admit that conversion may be effected if the captain has no commission, with regard to the existence of which there can be no difficulty. It is of course understood that, if the commanding officer dies, the second in command takes his place.

The President inquires whether a telegram will be sufficient.

His Excellency Lord Reay replies in the affirmative.

His Excellency Mr. Hammarskjöld does not see how there could be any more difficulty in placing a paper on board than in placing an officer there.

Mr. Guido Fusinato requests that the Netherland proposal, with the British amendment thereto, be put to vote.

The committee proceeds to vote.

Voting in favor of the Netherland proposal amended by the British delegation: Austria-Hungary, France, Great Britain, Italy, Japan, Norway, Netherland, Serbia, and Sweden.

Voting against it: Germany, United States of America, and Russia.

Not voting: Belgium.

Mr. Guido Fusinato would like to define the scope of the vote. Should the commission, as is held by Lord REAY, contain the name of the boat?

His Excellency Lord Reay says that the commission contains evidence of the fact that the officer is indeed a naval officer and that he is in command of such and such a ship.

In reply to a question by the President, Captain Ottley states that the name of the ship is always given in the commission.

Mr. Kriege requests that another vote be taken. He thought that it was only a question of the officer's commission without mention of the ship. Such a commission seemed to him quite sufficient to prove the commanding officer's authority, provided a commission were considered necessary. It would appear to be difficult to insert the name of the ship in the commission, because it is impossible to know in advance what officer will be placed in command of a converted vessel. If conversion takes place on the high seas, it is difficult to determine what authority can give the commission.

The President replies that it can be delivered by a squadron commander.

Mr. Kriege supposes that a cruiser detached from the squadron captures a merchant ship and converts it forthwith. In this case there would be only the commanding officer of the cruiser to designate an officer to take command of the converted vessel.

[1013] His Excellency Mr. **Hammarskjöld** thinks that such a designation would be sufficient.

The President proposes that a second vote be taken on the question whether the commission delivered to the commanding officer should indicate not only the officer's rank but also the vessel of which he is placed in command. The commission is delivered in accordance with the laws of the specific country.

His Excellency Mr. **Keiroku Tsudzuki** requests that a vote be taken on the original Netherland proposal.

Jonkheer van Karnebeek recalls that this proposal goes further than the object sought in the British amendment. If the committee desires to take it up again, it goes without saying that he will not oppose such action. But inasmuch as the views manifested by the committee have been against it, he states that he can support the English amendment, which has been voted, and that he understands it in the sense just indicated by his Excellency Lord REAY.

The President states that the second vote is to be on the interpretation to be given to the first vote; it will decide whether the commission should state not only the officer's rank, but also the command which he has been given by the national authority.

The committee proceeds to vote.

Voting in favor of the view that the commission should state the rank of the officer and the name of the vessel he is to command: Austria-Hungary (with the reservation that this commission shall not be in conflict with its domestic legislation), France, Great Britain, Italy (with the same reservation as Austria-Hungary), Japan, Norway, Netherlands, and Sweden.

Voting against this view: Germany, United States of America, and Russia.

Not voting: Belgium and Serbia.

With regard to the declaration of conversion, the President recalls that there is an Austro-Hungarian proposal¹ which does not permit reconversion as long as hostilities last.

His Excellency Baron **von Macchio** states that he has nothing to add to the statement of reasons for this proposal made by Mr. **LAMMASCH** and that he maintains the proposal.

His Excellency Mr. **Keiroku Tsudzuki** asks why reconversion is prohibited, inasmuch as it is possible to change the class even of war-ships during the course of hostilities.²

His Excellency Mr. **Hammarskjöld** replies that the allowing of successive conversions and reconversions of vessels on the high seas would cause the most serious difficulties to the neutrals they encountered, and it is for the purpose of avoiding these difficulties that the Austro-Hungarian proposal has been presented.

His Excellency Lord **Reay** supports the Austro-Hungarian proposal for the same reasons as those indicated by his Excellency Mr. **HAMMARSKJÖLD**.

Mr. **Fromageot** remarks that the condition of permanence aims to prevent abuses; neutrals should not be given any anxieties on this score.

[1014] His Excellency Mr. **Keiroku Tsudzuki** would prefer that the limitation of

¹ See Mr. **HEINRICH LAMMASCH**'s declaration at the second meeting of the Commission, ante, p. 747 [745].

² [There is a typographical tangle in the original French of this passage, but the foregoing is probably the purport of Mr. **TSUDZUKI**'s inquiry.]

the right of conversion and reconversion should apply not to the right itself but to the places where it may be exercised.

Jonkheer van Karnebeek recalls the amendment proposed by Mexico at the seventh meeting of the Commission, laying down clearly the rule that the prohibition of reconversion applies only to the duration of the war.

His Excellency Mr. Keiroku Tsudzuki sees no necessity of accepting the Austro-Hungarian proposal as long as the right of conversion on the high seas is not recognized. It might be accepted only after it has been agreed to admit the principle of the right of conversion on the high seas. But even in that case he does not see why reconversion in national ports might not be permitted.

The President thinks that under these circumstances it is useless to take a vote.

Mr. Guido Fusinato readily understands his Excellency Mr. KEIROKU TSUDZUKI's point of view. It is evident that no one can dispute the right to effect conversion in national ports; and when the rule does not contemplate the possibility of conversion on the high seas, the restriction would refer only to conversion in territorial waters and, as such, would be an arbitrary limitation of a sovereign right.

His Excellency Mr. Keiroku Tsudzuki does not go so far as to admit conversion without any restriction and asks whether it would not suffice, in order to attain the end in view, to stipulate that conversion, as well as reconversion, may be effected only in a national port or an occupied port.

The President thinks that as a matter of fact the question of the permanence of the conversion is closely related to the question of the place where it may be effected.

His Excellency Mr. Hammarskjöld states that conversion and reconversion on the high seas cause such serious difficulties that it is essential that they be prohibited, but there is reason to doubt whether the place of conversion can at this time be made the subject of a Convention. Present practice gives great latitude for various opinions on the place of conversion. Conversion on the high seas is therefore possible, and the condition required by Japan for her consent to the permanence of conversion is fulfilled in fact.

His Excellency Baron von Macchio asks that the report mention the conditions on which conversion may be effected and the consequences that follow therefrom from the point of view of its permanence.

The President reads the Netherland proposal concerning the sanction to be given to these various provisions.

Jonkheer van Karnebeek says that the proposal which would treat the vessel as a pirate is correct from the legal standpoint. It would seem to be excessive perhaps, but it contemplates especially cases in which the essential conditions are not complied with.

The President notes that the committee has no objections to make and asks whether Mr. VAN KARNEBEEK desires that this proposal be made a part of the Convention.

Jonkheer van Karnebeek does not insist upon it, provided that this adhesion be set forth in the minutes.

[1015]

ELEVENTH MEETING

SEPTEMBER 4, 1907

His Excellency Mr. Martens presiding.

The President asks whether the committee has any remarks to make on the minutes of the eighth meeting.

His Excellency Sir Ernest Satow makes the following observations:

I am taking the liberty of returning to the objections made by Captain BEHR and Mr. KRIEGE at the eighth meeting of the committee of examination with regard to the British proposal¹ in the matter of the destruction of neutral prizes. On reading the minutes of that meeting, I deem it advisable to reply more in detail than I did at the time to the objections as set forth in the minutes.

Captain BEHR quotes from my address of the 7th of August, in which I state that "the theory that the belligerent has the right to sink a neutral prize was advanced for the first time, if I am not mistaken, in the course of the recent war in the Far East," and he maintains that this statement is incorrect. He holds that, on the contrary, "the right to destroy neutral prizes in certain cases of *force majeure* is not an innovation in the domain of the law of nations," and he cites in support of this statement the instructions of the French Minister of Marine of July 25, 1870, and an order of the Secretary of the Navy of the United States, dated June 20, 1898. He adds that the American regulations to which I have referred were reproduced in the "Naval War Code" of the United States of 1900 and declares that this Code "is the most recent codification of international maritime law." Now, gentlemen, the British delegation cannot admit that these and other similar regulations are of an international character. These rules are national rules, for which there is no international sanction and which consequently cannot be considered as forming part of international law. It would be necessary at least to prove consent on the part of the neutral States to the application of these regulations to vessels and cargoes belonging to their subjects.

Captain BEHR adds that "if we consult English law as deduced from its recent practice, we reach practically similar conclusions." In support [1016] of this statement he quotes quite correctly the text of Article 303 and part of Article 304 of the *Manual of Prize Law* by Mr. GODFREY LUSHINGTON in Professor HOLLAND's revised edition of 1888. These articles are identical with Article 100 and part of Article 101 of the original work.² He holds that these stipulations, although appearing at first sight to cover only enemy prizes, are in reality equally applicable to a large class of neutral prizes. Agreed; but this fact does not admit of the interpretation which the speaker gives it. Article 303 actually says that a vessel which the belligerent cannot bring into port before a prize court must be released in the absence of evidence proving its

¹ Annex 39.

² Edition of 1866.

enemy character. All the more reason for following the same course in the case of a vessel whose neutral character has been indisputably proved.

From the existence of certain differences of opinion concerning what constitutes the nationality of a vessel, the speaker concluded that observance of the British regulations would not fail to result in the destruction of vessels that are really neutral prizes. He is free to draw from this theoretical contradiction such conclusions as he pleases. I shall merely take the liberty of remarking that it is easy to convince oneself by comparing Article 53 of Professor HOLLAND's *Naval Manual* with Article 7 of the Russian regulations respecting prizes that divergences on this point are not of very great importance. The points of view remain relatively the same, since on the one side it is maintained that in certain cases of *force majeure* the captor must be allowed to sink a neutral prize, while on the other side it is stated no less energetically that there are cases in which a neutral prize must be released. I need not speak at greater length to dissipate the notion that the English rules differ very little or well-nigh not at all from the instructions given by the French and American authorities. Neither must we lose sight of the fact that the Manual in question covers only the English regulations and does not treat the question from the point of view of international law.

Again, it has been emphasized that it would be unjust to demand that a belligerent should not sink a neutral prize carrying a cargo consisting wholly of arms and munitions of war. That, it seems to me, is a very exceptional case and a very weak argument for the exercise of a right which inflicts unreasonable injuries on neutral ships carrying cargoes that are comparatively innocent.

His Excellency Mr. KRIEGE has quoted, as expressing the writer's opinion, certain letters of Professor HOLLAND to the *Times*, in which he upholds the thesis that the destruction of a neutral prize by a belligerent is lawful in war. We have a letter from Professor HOLLAND to the *Times*, dated August 6 [1?], 1904, in which he sums up as follows the doctrine proclaimed by Lord STOWELL:

An enemy's ship, after her crew has been placed in safety, may be destroyed. Where there is any ground for believing that the ship, or any part of her cargo, is neutral property, such action is justifiable only in cases of "the gravest importance to the captor's own State," after securing the ship's papers and subject to the right of neutral owners to receive full compensation.

This, it seems to me, is not in accord with the views attributed to the professor who, if he has been correctly quoted, has drawn from the decisions of Lord STOWELL inferences which are not warranted by the texts of those decisions.

The two decisions in question are those relating to the *Actaëon* and the *Felicity*.

The *Actaëon* was an American vessel sailing under a permit issued by the British Government under date of August 12, 1812, and renewed on [1017] February 27, 1813, which placed the vessel on the same footing as a neutral ship. On May 12 it was seized (after having been several times searched in the course of its voyage by British ships) by the man-of-war *La Hogue* and burned on the same day.

The owner's right to restitution, that is to say to be reimbursed for the value of the vessel and its cargo, was not disputed. The court, therefore, had

nothing to decide except the question of damages, namely, whether the owner should recover the cost of the trial and receive in addition an indemnity.

After examining in detail the arguments in support of the English commander's action—such as the presence on board of letters bearing American addresses, the impossibility of placing a prize crew on board the seized vessel, and the danger that there would have been in allowing the vessel to proceed to the nearest American port (Boston) and thus give information to the Americans—the decision states that: "These are circumstances which may have afforded very good reasons for destroying this vessel and may have made it a very meritorious act in Captain CAPEL, as far as his own Government is concerned, but they furnish no reason why the American owner should be a sufferer."

The court therefore ordered restitution together with damages. This amounted to saying that, however necessary might have been the destruction of the prize, considered from the point of view of the interests of the captor State, it was an injurious act and a violation of the rights of the neutral owner, which the established usage of international law would not tolerate. That is precisely the point of view that we are now maintaining.

The *Felicity*. Here again we have to deal with an American ship, sailing under a permit, which was sunk on January 1, 1814. The complaint was not, however, lodged until October 13, 1818.

The judgment declared, among other things, "if impossible to bring in, their next duty is to destroy enemy property. Where doubtful whether enemy property, and impossible to bring in, no such obligation arises, and the safe and proper course is to dismiss. Where it is neutral, the act of destruction cannot be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own State: to the neutral it can only be justified, under any such circumstances, by a full restitution in value. These rules are so clear in principle and established in practice that they require neither reasoning nor precedent to illustrate or support them."

This case was complicated by the fact that there was a sailing permit, which, however, the captain did not produce until after the vessel had been set on fire, and of whose existence the first officer and the supercargo stated that they were unaware. There was therefore no way of distinguishing the vessel from an enemy prize. Some construe Lord STOWELL's language on this occasion as meaning that the captor has the right to destroy a prize, provided he is willing to give compensation for its value. That is an error. The law forbids the captor to destroy the neutral prize and condemns the captor who [1018] does so to indemnify the owner. In so far as the latter is concerned, therefore, the destruction of a neutral prize cannot be justified, and the only way of making amends, according to Lord STOWELL, is to pay the full value of the prize and damages. Even the presence of contraband on board cannot serve as an excuse. The rule is absolute.

Mr. KRIEGE also emphasizes the fact that, if we succeed in establishing a high international court of appeal in the matter of prizes, we shall thereby have given the owner of a destroyed cargo or vessel all the protection that he requires. In this connection, it is proper to note in the first place that no court yet exists, and in the second place that the argument is unsound, since, carried to its logical conclusion, it implies that in a well-organized State a man would have

the right to commit crimes of all kinds, because the courts are there to protect the victims.

Captain Behr remarks that it was never his intention to consider the national laws of the United States or the judgments of Lord STOWELL as international law. Nevertheless they are useful material in seeking the views of different nations on questions of international law and in establishing an international code.

His Excellency Sir Ernest Satow thought that Captain BEHR considered the Naval War Code of 1900 an international law.

Rear Admiral Sperry recalls that this Code was rescinded in 1904 because the rules it contained were not universally admitted by the other States.

Mr. Kriege thinks that without the complete text of Sir ERNEST SATOW's observations before one, it is difficult to answer in sufficient detail his remarks. He does not dare to enter into a debate with his Excellency Sir ERNEST SATOW as to the real scope of Lord STOWELL's decisions. He desires, however, to state that his perusal of Lord STOWELL's decisions has left him with a different impression from that of Sir ERNEST SATOW. He states, moreover, that his view of the interpretation to be given to these decisions is shared by so competent a jurist as Professor HOLLAND, and therefore it would seem to be not entirely without foundation. Mr. KRIEGE refers to the letters addressed by Professor HOLLAND to the *Times* on August 17 and 30, 1904,¹ as well as to a report submitted to the British Academy, the text of which was published in the *Revue de droit international* in 1905 (p. 359), in which Professor HOLLAND expresses himself as follows:

While it is, on principle, most undesirable that neutral property should be exposed to destruction without enquiry, cases may occasionally occur in which a belligerent could hardly be expected to permit the escape of such property, though he is unable to send it in for adjudication. The contrary opinion is, I venture to think, largely derived from a reliance upon detached paragraphs in one of Lord STOWELL's judgments on the subject, judgments which, taken together, show little more than that, in his view, no plea of national interest will bar the claim of a neutral owner to be fully compensated for the value of his property, when it has been destroyed without judicial proof of its noxious character. "Where doubtful whether enemy's property, and impossible to bring in, the safe and proper course," says Lord STOWELL, "is to dismiss." *The Admiralty Manual* of 1888 accordingly directs Commanders, who are unable to send in their prize, to [1019] "release the vessel and cargo without ransom, unless there is clear proof that she belongs to the enemy." This indulgence can hardly, however, be proclaimed as an established rule of international law, in the face of the fact that the sinking of neutral prizes is, under certain circumstances, permitted by the prize codes not only of Russia, but also of such Powers as France, the United States, and Japan.

In reply to his Excellency Sir ERNEST SATOW's concluding remarks, Mr. KRIEGE observes that the destruction of a neutral prize does not in itself constitute a wrong toward the owner; it is a wrong only in the event of the capture of the vessel not being justified. Now the unjustifiable capture of a vessel always involves damages to the owner. In this sense there is no essential difference between the case in which a vessel is destroyed and that in which it is brought into port and kept there during the trial of the case, which may last several

¹ Annex 43.

years. If the seizure of the vessel is declared illegal, there must be reparation for the wrong done the owner under both hypotheses. It does not follow by any means that the captain of a cruiser has the right to seize or to destroy a vessel when he knows that capture is unjustifiable. But in case he is mistaken in his judgment of the facts and seizes or destroys an innocent vessel, it is the courts that are called upon to protect the victims. In the first case they will order restitution of the vessel and will assess the damages; in the second case they will award the owner an indemnity sufficient to compensate him for all losses resulting from the vessel's destruction. The establishment of an international court would serve to increase the guarantees that the owner will obtain full satisfaction in case of an unjustifiable capture.

Rear Admiral Sperry reserves the right to return to these points when the committee again takes up the discussion.

The President notes that the right to destroy neutral prizes has not given rise to any new discussion. Furthermore, the various opinions maintained in Lord Stowell's decisions and Professor Holland's letters are very interesting, but they possess no binding or practical force, so far as we are concerned. Judgments of prize courts are the personal views of the judges; the opinions of Professor Holland are likewise personal opinions. However, the differences of opinion that exist in the magistracy, in science, and among Governments, the arguments that have been deduced from the existence of the "Naval Code" of 1900 and its repeal in 1904 are a further proof of the imperative necessity of reaching an agreement and of putting an end to the chaos that prevails in these various matters. It is my profound conviction, adds the President in conclusion, that it is our moral duty to furnish the Governments with certain elements that may be used as the basis of an international law or of universally recognized principles. It seems to me to be well-nigh impossible to create an international prize court without giving it a basis of jurisdiction, at least in the shape of certain principles of law formally recognized by the Powers of the civilized world.

The President asks whether the committee has any observations to make on the minutes of the ninth and tenth meetings.

The committee approves the minutes of the ninth meeting and postpones the adoption of the minutes of the tenth to the next meeting.

[1020] The President says that according to the order of business the committee was to hear Mr. Fromageot's report on the treatment of private property, but the German delegation has asked for a postponement, reserving the right to make modifications therein, particularly with regard to the observations presented by his Excellency Baron Marschall von Bieberstein on the question of inviolability of private property at sea.

Mr. Fromageot (reporter) requests the members of the committee to inform him as soon as possible of the modifications that they would like to have made in his reports.

Since the order of business calls for the reading of Mr. Fromageot's report¹ on the "exemption from capture of coastal fishing boats and certain other vessels in time of war," the President states that his Excellency Mr. Keiroku Tsudzuki has made a new proposal on this subject, the discussion of which might take place after the reading of the report.

¹ See report to the committee of examination, eleventh meeting, annex A; see also report to the Conference, vol. i, p. 263 [269].

Mr. Fromageot reads his report.

The **President**, after reading the text of the Japanese amendment,¹ remarks that the prohibition which it contains is mentioned in the report. It is clearly established therein that the peaceful character of fishing barks is the only condition of the exemption which they enjoy.

His Excellency **Mr. Keiroku Tsudzuki** states that the reasons for his amendment are sufficiently clear to require no explanation.

Mr. Guido Fusinato makes certain remarks on the scope of the amendment, especially on its second paragraph.

Mr. Louis Renault thinks that the Japanese amendment contains a very just principle, which it would not be inadvisable to mention in the draft Convention. Paragraph 2 of Article 1 sets forth the conditions of the exemption, which depend upon the fishing and other boats themselves, while the Japanese proposal contemplates a prohibition imposed upon the States to which these vessels belong. These States must not, either directly or indirectly, make use of fishing boats for hostile purposes.

His Excellency **Mr. Hagerup** concurs in **Mr. RENAULT's** observations. He would even be in favor of going still farther and extending this prohibition to the boats designated in Article 2.

Mr. Louis Renault thinks that under these circumstances the Japanese amendment might be made a third article.

Mr. Guido Fusinato remarks that the Japanese amendment permits the belligerent States to use these boats openly.

Mr. Louis Renault thinks that in such an event the penalty remains the same; the boat does not share in the benefit of the exemption.

His Excellency **Mr. van den Heuvel** remarks that the committee has already examined this question and was unanimous in thinking that fishing barks [1021] should not be used clandestinely in military operations but might take part therein if they bore external marks.

His Excellency **Sir Ernest Satow** accepts the Japanese proposal and concurs in **Mr. LOUIS RENAULT's** observations, but he would prefer to have the amendment conclude Article 1. As a matter of fact, it would seem to be difficult to conceive of using the vessels mentioned in Article 2 for military purposes. They would be of little service as torpedo-boat destroyers, while fishing boats might very well be suspected of such use.

His Excellency **Mr. van den Heuvel** points out the fact that that is exactly the meaning of the Japanese amendment, which merely prohibits the clandestine use of fishing barks for hostile purposes. This amendment includes a principle and a practical requirement. The principle contains the right to make use of the fishing boat for military purposes, the requirement is that the vessel must bear a distinctive, visible mark.

The **Reporter** observes that the committee has already discussed this question and that it has decided by a vote of 11 to 3 not to allow fishing barks to be used for military purposes, for example, as transports or torpedo-boat destroyers.

The **President** replies that the Japanese proposal being a formal one, the committee is obliged to pass upon it.

Mr. Louis Renault proposes the following formula, which would constitute a paragraph 3 of the article: "*The contracting states agree not to use these vessels for a military purpose while allowing them to preserve their pacific appearance.*"

His Excellency **Mr. Keiroku Tsudzuki** doubts whether this prohibition

¹ Annex 55.

should be extended to boats engaged in small local trade, in the first place because it is not as easy to distinguish them as in the case of fishing boats, in the second place because they frequently belong to companies that are rich enough not to need the benefit of this exemption.

His Excellency Mr. **Hammarskjöld** would prefer an expression which, like the word "disguise," would better indicate deception or ruse.

Mr. **Louis Renault** is not of this opinion. There cannot be a disguise when the vessel retains its ordinary aspect, that is, when its peaceful appearance is preserved.

His Excellency Mr. **Keiroku Tsudzuki** asks whether boats engaged in small local trade should have the same benefit of immunity as fishing boats.

His Excellency Mr. **Hagerup** believes that the prohibition contemplated by the Japanese amendment might be extended to the boats mentioned in Article 2. It is not impossible to use them secretly for military purposes, and it is moreover difficult to stipulate that they must not engage in fraud.

His Excellency Sir **Ernest Satow** states that he will vote for the Japanese amendment with the wording proposed by Mr. **RENAULT**.

His Excellency Mr. **Keiroku Tsudzuki** states that he reserves his vote in the matter of boats engaged in small local trade.

Mr. **Louis Renault** remarks that under these circumstances the whole subject must be discussed again.

[1022] His Excellency Mr. **Keiroku Tsudzuki** does not want to cause a further discussion of the first two paragraphs, but merely makes reservations with regard to the scope of the third.

His Excellency Count **Tornielli** remarks that the reservation of his Excellency the Ambassador of Japan would lead to the inference that boats engaged in small local trade might be used for military purposes.

His Excellency Mr. **Keiroku Tsudzuki** asks himself whether it would not be too easy to make clandestine use of these vessels to give them as clearly defined protection as to fishing boats; but he does not insist upon this, since what he has had to say on the subject were merely certain doubts and not strong objections.

His Excellency Count **Tornielli** thinks that boats engaged in local business will preserve their ordinary outward appearance and that they must bear a distinctive mark, if they are used for military purposes.

On the proposal of the **President**, a vote is taken on the Japanese proposal by the raising of hands, and the proposal is adopted.

Jonkheer van Karnebeek remarks that the provisions voted by the committee are incomplete and of no practical value, unless they determine the character of the outward marks that must appear on a boat used for military purposes.

The **President** thinks that it is difficult to enter into these details and that it is preferable to leave it to the Governments to regulate them.

Mr. **Kriege** wishes to make an observation with regard to Mr. **FROMAGEOT**'s report. In the course of the seventh meeting of the committee he declared that in his opinion vessels which are engaged temporarily in coastal fishing or in small local trade, but whose build enables them to be used for other purposes, should be subject to capture. He did not insist upon changing the phraseology of the proposal on condition that his remarks should be mentioned in the report.

Consequently he has requested the reporter to add a few words on the subject and Mr. FROMAGEOT has shown himself entirely disposed to do so.

His Excellency Mr. Hagerup thinks it would be of advantage to omit the following clause: "It appeared preferable not to introduce an innovation in this respect, but to leave matters as they stand at present," because this seems to imply that the question of indemnities for requisitions has been decided in the negative. That is not the idea of the committee as gathered from its debates, and he personally is of the opinion that the principles of the 1899 Convention relative to war on land should be applied in this case.

The Reporter replies that he has endeavored to present in his report as accurate an account as possible of the committee's discussions. It seems to him difficult to admit mention of the debates on the subject of the right of police or the right of requisition and utilization for military purposes. He is, however, ready to take into account the observations of the first delegate of Norway.

The President requests Mr. FROMAGEOT to read his second report, which is devoted to the question of the crews of enemy merchant ships captured by a belligerent.

The Reporter reads the report.¹

[1023] Mr. Heinrich Lammasch, fearing lest the phraseology of Article 3 may cause certain difficulties, as a result of the situation which exists between Austria and Hungary, requests that the words "belligerent captor" be substituted for "captor State." He thinks, moreover, that the final paragraph of the report is a little too absolute in tone. In speaking of the setting free of the crews of captured enemy vessels, it states that "their liberty should depend upon certain conditions." We must not forget that Article 1 stipulates that neutral seamen are free unconditionally; the third [sixth] paragraph on page 1013 [1028] should at least say "that in certain cases their liberty should depend upon . . ."

Finally, on the last page, Article 3 contains a typographical error. It speaks of "the conditions laid down in Article 1, paragraph 1, and in Article 2"; this should be Article 1, paragraph 2."²

Official note is made of this observation.

Mr. FROMAGEOT's report having been approved, the President believes he is interpreting the sentiments of the committee in thanking the reporter for his work. (*Prolonged applause.*)

The President proposes that the committee pass to the fourth point on the order of business, which calls for the discussion of the draft regulations concerning the status of enemy merchant ships on the outbreak of hostilities.³ He asks the British delegates whether they are in possession of the instructions that they expected from their Government.

His Excellency Lord Reay replies in the affirmative and states that he is ready to set forth the views of his Government on the entire project which is under discussion. According to the system which the English delegation would be disposed to accept, merchant ships that happen to be in an enemy port on the outbreak of hostilities might be seized, with the obligation of returning them at the end of the war without any indemnity. If they are requisitioned, an indemnity will be granted. Enemy merchant ships, which have left their last port

¹ See report to the committee of examination, eleventh meeting, annex B; see also report to the Conference, vol. i, p. 261 [267].

² See *post*, p. 1014 [1029]. [The typographical error referred to was evidently corrected by the reporter prior to publication of the minutes.—Editor.]

³ Annex 25.

of departure before the outbreak of war and which are encountered at sea, are subject to capture, on condition that they be returned at the end of the war without indemnity. If they should be requisitioned or destroyed, the belligerent will be obliged to indemnify their owner. Similar rules should be applied to the goods on board the vessels mentioned in the project: the goods may be seized on condition of restitution without indemnity at the end of the war, or requisitioned on payment of an indemnity. The British Government prefers to preserve the time-honored expression "days of grace" rather than "sufficient period." Finally, in Article 5 of the project, the words "merchant ships which have been designed to be converted into war-ships" should be replaced by the following: "merchant ships capable of being converted into war-ships."

The President thinks that his Excellency Lord REAY's observations might be discussed to advantage by the committee, if the honorable delegate of Great Britain would kindly indicate, on the reading of the project article by article, what are the amendments proposed by the British Government. He thinks that he ought to remind the committee that the question has already been maturely discussed and that it would be advisable not to go over the same ground again.

[1024] Mr. KRIEGE requests a postponement of the debate, in order that the

British amendments may be distributed and studied with care by the members of the committee. He recalls that at the meeting of August 14 he reserved his vote with regard to the expression "designed in advance," so that he might consider its import more closely. Now, after reflection, he has reached the conclusion that the term is not sufficiently clear for use in a Convention. He therefore joins in the negative vote cast by the delegations of France and of Russia. He likewise declares himself against the formula "capable of being converted into war-ships," which is now proposed by the delegation of Great Britain.

The President willingly concurs in Mr. KRIEGE's motion and adjourns the meeting, stating that the next meeting of the committee will take place on Friday, September 6.

[1025]

Annex A

EXEMPTION FROM CAPTURE OF COASTAL FISHING BOATS AND CERTAIN OTHER CRAFT IN TIME OF WAR

REPORT TO THE COMMITTEE OF EXAMINATION ¹

According to a very ancient custom ² coastal fishing vessels are considered exempt from capture in time of war, and it may be added that at the present

¹ *Reporter*: Mr. HENRI FROMAGEOT. See also the report to the Conference, vol. i, p. 263 [269].

² See more particularly the old documents contained in Pardessus, *Collection de lois maritimes antérieures au XVIII^e siècle*, vol. iv, p. 319.

day this practice is universally approved.¹ Nevertheless it is, according to the country, more or less legally assured, and it may appear advisable to establish the principle definitively in a conventional provision.

Moreover, although this question did not figure expressly in the Russian program for the Conference, it was inserted by our president, his Excellency Mr. MARTENS, among the questions submitted to the Fourth Commission² for consideration, in order to satisfy the desires of various persons.

The reason for this exemption is, and always has been, one of humanity. The favored treatment is given, not to the fishing industry, but to the poor people who are engaged in it. Its object is not to protect one maritime industry more than another, but merely to avoid doing poor people, who are especially deserving of interest, an injury which would be of no benefit to the belligerent. However, it is clear that this favor should not become an obstacle to naval operations, and that it ceases to be justified if the fisherman engages in hostilities.

This immunity, thus understood, was already contemplated by the Belgian general proposition relating to the rights of belligerents in respect to enemy private property.³ It was the subject of a more complete special proposition on the part of the delegation of Portugal.⁴ The delegation of Austria-Hungary added to it a proposition including vessels engaged in local trade.⁵ Finally, the delegation of Italy proposed the establishment of a similar principle for vessels engaged in scientific or humanitarian work.⁶

[1026] These propositions did not meet with any objection in Commission.⁷

Their scope was specified and the committee of examination was charged with the elaboration of a text.

This is the project brought before you to-day.

ARTICLE 1

Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

In the very beginning, so far as fishing is concerned, the immunity is recognized only in respect to vessels *used exclusively for fishing along the coast*.

It appeared to be impossible to specify a tonnage limit or a maximum crew, or a special build. All these things vary according to the locality. But it was

¹ His Excellency Mr. CHOATE (see *ante*, Fourth Commission, twelfth meeting, August 7, 1907, and annex to this meeting) mentioned in this regard, the decision of the Supreme Court of the United States in the case of the fishing boats *Paquete Habana* and *Lola* (Decision of January 8, 1900, *United States Supreme Court Reports*, vol. 175, p. 677).

² See *post*, Fourth Commission, annex 1, *Questionnaire*, question XIII: Are coastal fishing boats, even though they belong to subjects of the belligerent State, lawful prize?

³ See *post*, Fourth Commission, annex 14, Article 2.

⁴ *Ibid.*, annexes 49 and 51.

⁵ *Ibid.*, annex 50.

⁶ Observation of his Excellency Count TORNIELLI, twelfth meeting of the Commission, August 7.

⁷ Minutes of the Commission, eleventh meeting, August 2; and twelfth meeting, August 7.

understood that all these elements should be taken into consideration, if the case arose, in determining the *exclusive use* contemplated by the text.¹

Furthermore, it did not appear to be possible to specify the method of propulsion—whether sail or mechanical propulsion—for a fishing boat is propelled by sail, by oars, or by a small motor, according to the locality. In short, the essential thing is that there shall be exemption whenever the fishing boat in question is, *in fact*, really the harmless and peaceful craft of a fisherman who is deserving of protection.

There was a desire shown in the Commission to fix the distance of the so-called *coastal* fishery.² This likewise appeared to be impossible because of the many different kinds of coasts and fishing grounds, which sometimes are beyond territorial waters, and at varying distances.³

It will be noted likewise that the text does not mention exclusively coastal fishery in the waters of the enemy, because such fishery may be engaged in along the coasts of a State other than the belligerent State and beyond the protection of its territorial waters.

The Portuguese delegation, in its explanations—the eminently practical and humanitarian spirit of which the committee of examination did not fail to recognize—mentioned more particularly the fishery on the coasts of Morocco.

In conformity with the proposition of Austria-Hungary, the text grants immunity, under the same conditions, to small boats employed in local trade; that is to say, boats and barks of small dimensions transporting agricultural products and engaged in small local trade—for example, between the coast and the neighboring islands or islets.

In all cases, the exemption applies to the boat itself, its fishing and sailing equipment, and its cargo.

The moment the boat engages, directly or indirectly, in hostilities and war operations, it naturally loses all right to immunity. That is a question of fact.

[1027] It was at one time the idea of the committee to define further the position of fishing boats and boats engaged in small coastal trade with respect to belligerent forces, more particularly as regards the right of police or the right of requisition.⁴

It appeared to be preferable not to enter now into the settlement of such questions.⁵ The committee confined itself to mentioning in the third paragraph, in conformity with a proposition of the Japanese delegation,⁶ that belligerents must not take advantage of the harmless character of the boats in question by using them for ruses of war.

¹ Minutes of the committee of examination, sixth meeting, August 21; and seventh meeting, August 23.

² Observation of his Excellency Mr. BEERNAERT, Fourth Commission, twelfth meeting, August 7.

³ Observations of Captain IVENS FERRAZ, sixth meeting of the committee of examination, August 21.

⁴ Minutes of the committee of examination, sixth meeting, August 21; and seventh meeting, August 23; and annexes 52, 53 and 54.

⁵ Minutes of the committee, eighth meeting, August 24; and the declarations made in the name of the delegations of Austria-Hungary and of Sweden by their Excellencies Baron VON MACCHIO and Mr. HAMMARSKJÖLD, and the observation of his Excellency Mr. HAGERUP, thirteenth meeting of the Commission, September 18, 1907.

⁶ Annex 55 Minutes of the Committee, eleventh meeting, September 4.

ARTICLE 2

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

The provision of this article, due, as has been seen, to a proposition of the delegation of Italy, is in conformity with a custom, one of the most celebrated precedents of which is the expedition of *La Pérouse*.

There could hardly be any objection to the sanction of this principle, and it was unanimously adopted.¹

It did not appear to be necessary to mention in the text the conditions upon which the enjoyment of this immunity depends. It is clear that this favor is granted only on the condition of not engaging in war operations. In order to avoid difficulties, the State whose flag the vessel in question flies should abstain from involving it in any war service. The favor which is granted gives the vessel a sort of neutralization, which must continue until the end of hostilities and which is incompatible with any change in its character.²

Annex B

CREWS OF ENEMY MERCHANT SHIPS CAPTURED BY A BELLIGERENT

REPORT TO THE COMMITTEE OF EXAMINATION ³

In present international practice, the men, the officers, and the captain composing the crew of a captured enemy merchant ship are treated as [1028] prisoners of war. The right of capture is, in a manner, applied to the crew as well as to the ship itself, often without endeavoring to distinguish between neutral subjects and enemy subjects.

To justify this mode of action, it is argued that it is to the interest of the capturing belligerent to weaken the power of the enemy by depriving him of effective forces intended, more or less, to serve on war-ships.

However equitable it may be, this practice has given rise to difficulties on several occasions. It has been criticised because of the hardship caused by treating as prisoners of war private persons who take no part in hostilities, the majority of whom are poor people, whose arduous business is their only way of earning a living, and who deserve as much consideration as individual foreigners in armies and in enemy territory.

This matter did not figure in the Russian program for the Conference. It was laid before the Fourth Commission in a British proposition,⁴ which contemplated only neutral sailors; afterwards in a Belgian proposition,⁵ which extended the benefit of freedom even to enemy sailors.

¹ Minutes of the committee, ninth meeting, August 28, and annex 56.

² *Ibid.*

³ *Reporter*: Mr. HENRI FROMAGEOT. See also the report to the Conference, vol. i, p. 261 [267].

⁴ See *post*, Fourth Commission, annex 45.

⁵ Minutes of the Commission, seventh meeting, July 19, 1907, declaration of his Excellency Mr. VAN DEN HEUVEL, annex 46.

As there was no discussion of the question before the Commission, and as the British delegation declared the Belgian amendment acceptable, the question was referred to the committee of examination.

The committee admitted unanimously in principle the desirability of modifying the treatment of the crews of captured, inoffensive enemy ships, which are taking no part in the war, on condition that by so doing the legitimate interests of the capturing belligerent are not prejudiced by such crews increasing the effective force of the enemy.

The provisions which follow were prepared from this point of view. The principle is laid down that the crews of captured enemy ships are not made prisoners of war, but that, in certain cases, their liberty should depend upon certain conditions, in order that the capturing belligerent may be assured that his rights will be respected so far as is compatible with humanity.

ARTICLE 1

When an enemy merchant ship is captured by a belligerent, such of its crew as are subjects or citizens of a neutral Power are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise subjects or citizens of a neutral Power, if they promise formally in writing not to serve on an enemy ship while the war lasts.

Article 1 contemplates neutrals who form part of the crew of a captured enemy vessel. In principle they are not made prisoners.

Nevertheless the article makes a distinction between the men of the crew and the captain and officers.

In the first place it was proposed¹ to require both officers and men to bind themselves not to embark on any enemy vessel, whether war-ship or merchant ship. But it appeared that to exact a promise from sailors, the scope of which they would hardly understand and the execution of which it might at times be very difficult to control, would impose a hardship frequently impossible to enforce. Hence the distinction established by the text. The sailors are purely and simply free; the captain and officers are set free only if they [1029] promise formally and in writing not to serve on an enemy ship as long as the war lasts.²

This promise is in the form of a written agreement. There had been question of an oath; but that formality appeared to offer serious difficulties, by reason of the differences in the practice followed in different countries, and it could not be established.

ARTICLE 2

The captain, officers, and members of the crew, when enemy subjects or citizens, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of war.

Article 2 treats of enemy subjects, whatever their capacity on board; the men of the crew as well as the captain and officers are set free only upon their promise not to make use of their liberty against the military interests of the captor.

The engagement not to undertake any service bearing upon war operations

¹ Proposition of the British delegation. See *post*, Fourth Commission, annex 47.

² See committee of examination, fifth meeting, August 16, minutes; annex 48.

as long as the war lasts was understood to include embarking on board a war-ship as well as land service in the arsenals or in the army, or any other military or naval service.

The form of the engagement is the same as that provided by Article 1. It goes without saying that if a sailor should not be able to write or sign his name, his engagement would have to be confirmed in writing before witnesses of his own nationality and in the presence of the captain. It has not seemed necessary to include in the text the details of this formality.

ARTICLE 3

The names of the persons retaining their liberty under the conditions laid down in Article 1, paragraph 2, and in Article 2, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

The object of this provision is to assure the execution of the engagement imposed by the preceding articles, whether upon neutral officers, or upon all enemy subjects. The captor State must send to the other belligerent a copy of the list of individuals thus retaining their liberty, and the latter must not knowingly enroll them in its service.

ARTICLE 4

The preceding provisions do not apply to ships taking part in the hostilities.

The only object of the regulations, as we explained at the beginning, is to protect the crews of ships peacefully pursuing a commercial enterprise. It seemed that because of the innocent character of their occupation these crews should not be made prisoners of war and treated as if they were taking part, even indirectly, in the hostilities. It is therefore natural that there should be no benefit in cases where the cause no longer exists.

Whether a ship is peacefully engaged in a commercial enterprise or participating in the hostilities is a question of fact, which it seemed to be impossible to reduce to a fixed rule.

[1030]

TWELFTH MEETING

SEPTEMBER 6, 1907

His Excellency Mr. Martens presiding.

The minutes of the tenth meeting are adopted.

The committee postpones to the next meeting the adoption of the minutes of the eleventh meeting.

The President gives the floor to Mr. Fromageot (reporter), who reads the report concerning the inviolability of enemy private property at sea.¹

The President asks whether the committee has any observations to make on Mr. FROMAGEOT's report.

The committee approves this report.

The PRESIDENT proposes, in conformity with the order of business, that the committee take up the final reading of the draft regulations concerning days of grace. He recalls that the delegation of Great Britain requested a postponement of this second reading pending receipt of instructions from its Government. The committee has before it to-day the text ² proposed by Great Britain, which can be compared with the original text.³ The PRESIDENT asks the members of the committee to consider the general discussion closed and to present any objections that they may have to the articles as they are read.

Article 1 gives rise to no objections and is adopted. It reads as follows:

ARTICLE 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

[1031] The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

Rear Admiral Sperry states that he reserves his vote on the project as a whole.

Mr. Fromageot (reporter) remarks that the British project is entitled "Project concerning days of grace." This title, which does not include all the provisions of the regulations, seems to have a restrictive meaning. He inquires

¹ See report to the committee of examination annexed to these minutes; see also the report to the Conference, vol. i, p. 240 [245].

² Annex 26.

³ Annex 25.

whether the delegation of Great Britain sees any objection to preserving the title of the original project.

His Excellency Lord Reay states that he has no objection to preserving the original title, if Article 1 of the British proposal containing the words "a reasonable number of days of grace" is adopted.

The President reads Article 2 of the British project,¹ which is adopted, and Article 3:

ARTICLE 2

A merchant ship, unable, owing to circumstances of *force majeure* to leave the enemy port within the period contemplated above, or which was not allowed to leave, can not be confiscated.

It is liable only to detention without payment of compensation, but subject to the obligation of restoring it after the war, or to requisition on payment of compensation.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, can not be confiscated. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such cases provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After these ships have touched at a port in their own country or at a neutral port, they are subject to the laws and customs of maritime war.

Mr. Kriege makes the following observations:

Article 3 is open to the objections which I had the honor to indicate at the meeting of August 14. The provision which it contains is calculated to establish an inequality among the Powers. It will have the effect of creating a privileged situation for Powers which have naval stations in all seas, where they can bring in enemy vessels. Those Powers will be able to take full advantage of the provisions of Article 3, which allows seizure without indemnity.

On the other hand, Powers which do not possess ports scattered over the face of the earth will find it impossible to bring enemy vessels into one of their ports and therefore will be unable to take advantage of the right of seizure. It is true that the provision recognizes that they have the right to destroy the prize, but this destruction compels them to compensate the owner for the value of the ship and of the cargo. It follows that such a Power is in a less advantageous situation under this provision than a Power of the first category. To remove the inequality, it would be necessary to allow destruction without indemnity. However, as a guarantee against unnecessary severity, the article might conclude with [1032] the formula of the Russian proposal, as follows:

Or to be requisitioned in consideration of an indemnity, or even to be destroyed, if their preservation might endanger the safety of the capturing vessel or the success of its operations.

In the event that this wording should not be accepted by the committee, I would propose the omission of the entire article.

His Excellency Mr. Keiroku Tsudzuki concurs in Mr. KRIEGE's suggestion as to the omission of Article 3.

The President proposes that the omission of Article 3 be put to vote.

Captain Behr desires to give the reasons for his vote. He will vote for the

¹ Annex 26.

omission of the article. It is true that Article 3 appeared in the Russian proposal,¹ but that proposal stipulated an obligatory period of grace. With an ordinary period of grace, Article 3 has not the same scope and can be omitted without any disadvantage.

His Excellency Mr. **van den Heuvel** will vote against the omission of Article 3. This article has nothing to do with the character of days of grace, which concerns only vessels that happen to be in an enemy port on the outbreak of hostilities. Article 3 refers to those which left their last port of departure before the outbreak of hostilities, and it is in conformity with justice and equity not to leave exposed to the danger of capture and of destruction a vessel which is unaware of the outbreak of war.

The **President** puts the omission of Article 3 to vote:

Voting for omission: Germany, Argentine Republic, Japan, and Russia.

Voting against it: Austria-Hungary, Belgium, France, Great Britain, Italy, Norway, Netherlands, Portugal, Serbia, and Sweden.

Not voting: United States of America.

The **President** states that, as the vote has resulted in 4 yeas, 10 nays, and 1 not voting, the omission of Article 3 is not adopted.

Mr. **Kriege** states that he withdraws the amendment which he proposed to Article 3, since it is not favored.

Mr. **Heinrich Lammasch** remarks that there is a difference between Article 3 as voted at the fourth meeting of the committee and the one that forms the subject of Great Britain's project. The original Article 3 contained the obligation of providing for the safety of the persons on board and the preservation of the ship's papers, while the British project makes no mention of this obligation.

His Excellency Lord **Reay** replies that this omission is the result of an error.

Mr. **Guido Fusinato** inquires whether the British proposal has intentionally substituted the word "captured" for "confiscated."

[1033] His Excellency Lord **Reay** states that he is not opposed to keeping the word "confiscated."

The **President** states that Article 3 of the British project is adopted, with the substitution of the word "captured" for the word "confiscated" and with mention providing for the safety of the persons on board and the preservation of the papers.

The **PRESIDENT** reads Article 4, which is adopted:

ARTICLE 4

Enemy cargo on board the vessels referred to in the preceding articles is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.

Mr. **Kriege** says that his vote refers solely to the cargoes of the vessels mentioned in Article 2 and not to those of the vessels referred to in Article 3, which he proposed should be omitted.

Captain **Behr** concurs in this remark.

The **President** reads Article 5:

¹ Annex 18.

ARTICLE 5

The present regulations do not affect merchant ships capable of being converted into fighting ships.

The PRESIDENT recalls that the committee adopted the original reading of this article so as to avoid the word "capable" [*susceptibles*] which seemed to be too vague. He thought that the words "designated in advance" were more precise. The President asks whether it is the intention of Great Britain, by employing the term "fighting ship" [*vaisseau de combat*], to bring about a discussion of proposals A and B relative to the definition of the term "war-ship" [*vaisseau de guerre*].¹

His Excellency Lord REAY replies that this is not his intention.

Mr. KRIEGE thinks that Article 5 of the project proposed by the British delegation, according to which the regulations would not refer to merchant ships capable of being converted into fighting ships, is calculated to deprive the preceding provisions of their importance. It would apply only to sailboats. In fact, it may be said that the steamboat does not exist that cannot be used for military purposes. Any steamboat whose speed is greater than the average speed of merchant ships can be used as a cruiser for chasing those vessels. On this pretext, therefore, days of grace might be refused not only to big steamers, but to all the vessels that constitute the most valuable part of the merchant marine and which it is of the greatest importance to exempt from capture.

There remain steam vessels of slow speed and small coasting steamers and tugs. All these vessels without exception are capable of being used for the laying of mines and thus may serve in a very decisive manner for military purposes.

It follows that Article 5 of the English proposal amounts to an annulment of the preceding provisions. Those provisions may be accepted or rejected, but it does not appear to be very consistent to accept them and then to add a clause nullifying their acceptance.

For these reasons Mr. KRIEGE proposes that Article 5 be omitted.

[1034] His Excellency Mr. HAMMARSKJÖLD inquires whether this omission refers to Article 5 as voted by the committee or Article 5 of the British project.

Mr. KRIEGE replies that it refers to both Article 5 as voted by the committee and Article 5 of the British project.²

His Excellency Lord REAY states that he does not accept the interpretation which Mr. KRIEGE gives to Article 5. It might apply to war-ships, but the term "fighting ships" is more significant and more restrictive.

His Excellency Mr. KEIROKU TSUDZUKI concurs in Lord REAY's observations and adds that he can accept the project as a whole only if Article 5 is adopted.

Mr. FROMAGEOT recalls that the original Article 5 was accepted at the meeting of August 14 by 9 votes to 2, with 2 members not voting.³

Mr. HEINRICH LAMMASCH notes that some cannot accept the project unless it contains Article 5 and others cannot accept it if it contains this article. In order to reconcile all these opinions, it is necessary to find a way to prevent vessels that are released from being used for military purposes. It is natural that the Gov-

¹ Annex 2.

² Annex 26.

³ Annex 24.

ernment which has set enemy vessels free should have assurance that these vessels will not be used in the war. Mr. KRIEGE has clearly demonstrated that Article 5 may give rise to misunderstandings; these misunderstandings will cease if the States agree not to use the vessels released under the circumstances stipulated in Articles 1, 2, and 3. This formal promise can be made the subject of a provision which will be in harmony with the project as a whole and which might read as follows:

The contracting parties agree not to use for military purposes the vessels that are released under the circumstances set forth in Articles 1, 2, and 3, while the war lasts.

His Excellency Mr. **van den Heuvel** would like to find a solution that would save a project which, as a whole, rests upon a just basis. Mr. **LAMMASCH**'s proposal does not, however, seem to meet the situation for which Article 5 aims to make provision. It merely meets the apprehension in the belligerent's mind that the vessels he allows to depart may be converted into war-ships. There is little ground for this apprehension, since the belligerent always has the power to detain the vessel which he thinks can be converted and to lay down the conditions of its departure. The real objective of Article 5 is to permit not only the detention of the vessel capable of conversion but also its confiscation and destruction without indemnity. The vessel will be treated in this way because it is of a mixed category, now a merchant ship and now a war-ship. Again, Article 5 as proposed by Great Britain goes beyond the purpose alleged. It does not confine itself to vessels that have a twofold purpose, merchant and naval; it is couched in such broad terms that it can be applied to almost all ships, and for that reason it is open to criticism. The real merchant ship engaged on a purely peaceful errand and which, in the mind of its owners, is never to undertake any other, might by the proposed wording of the article lose the rights belonging to it as a merchant ship, solely because the enemy thinks that it is capable of being converted and that it may be used in military operations.

[1035] The **President** recalls that in voting for the original Article 5 the committee had in view the prevention of arbitrary action. It decided upon the words "designated in advance" as having a more precise meaning.

His Excellency Mr. **Keiroku Tsudzuki** thinks that Article 5 would have merely an illusory effect, as there are many countries that do not designate vessels in advance or, if they do so, do not publish their names. Furthermore the term "fighting ship" has a more precise meaning. Therefore the new wording of Article 5 seems preferable.

Jonkheer van Karnebeek asks whether as a matter of fact it is really necessary to place merchant ships designated in advance to be converted into war-ships outside the scope of the present regulations. The risk that no belligerent wants to run is that of having the vessel which it has allowed to depart freely to be used against him later as a war-ship. The committee is agreed on this point and the formula sought aims at nothing else. This being so, Mr. **VAN KARNEBEEK** asks whether the right of detention referred to in Article 2 is not already sufficient. Do we still need the right of confiscation, which goes far beyond the object in view?

The **President** replies that the vessel may not in fact always be detained.

Jonkheer van Karnebeek considers that even this does not justify confiscation.

His Excellency Mr. **Keiroku Tsudzuki** does not think that the belligerent can be considered bound by reason of the vessels which his adversary may allow to depart.

Mr. **Heinrich Lammasch**, replying to the observations of his Excellency Mr. VAN DEN HEUVEL, remarks that the only reason for establishing a difference between vessels is because certain of them can be used for military purposes. But if this concrete possibility should be removed as a result of a provision of international law recognized by the States, the danger will no longer exist and the difference will cease. Again, if it is possible to trust the word of the States, an agreement that they will make not to convert the vessels released does away with the reasons which have led the committee to draw a distinction between vessels.

His Excellency Lord **Reay** remarks that he has no idea of casting suspicion upon the good faith of Governments, but that the British delegation consider vessels capable of conversion as "potential" fighting ships and therefore as forming part of the naval forces of a belligerent.

Hence he considers it necessary to stipulate clearly that such vessels do not enjoy the privileged status granted to the other vessels referred to in the project. Article 5 is the essential condition upon which depends the adoption of the project as a whole by his delegation.

The President says that the committee is in agreement on the principle of Article 5, but it is a question of wording it so as to satisfy everyone and do away with arbitrary action.

Mr. **Guido Fusinato** asks whether the British delegation is disposed to support the original reading of Article 5.

His Excellency Lord **Reay** replies in the affirmative, if the committee is unanimously in favor of that reading.

[1036] His Excellency Mr. **Keiroku Tsudzuki** states that the original reading of Article 5 would make the rights of belligerents nugatory, since no one will designate in advance the ships subject to conversion.

The President replies that the words "designated in advance" do not imply an express designation by the belligerent's specific act, but a designation that might follow from circumstances of fact.

His Excellency Mr. **Keiroku Tsudzuki** inquires what, under those circumstances, would be the effect of substituting the word "intended" for the expression "designated in advance."

Mr. **Fromageot**, in his capacity as reporter of the committee, recalls that no rule was fixed at the preceding meetings as to the manner of the designation for conversion. The designation remains a question of fact, which must be determined from all the circumstances, such as the vessel's build, its registration on the list of vessels to be used in war, etc., etc.

Mr. **Kriege** thinks that this is not the meaning of the expression "designated in advance." This designation must be established by virtue of a specific act on the part of the competent authorities and cannot follow simply from the vessel's build.

After an exchange of views on the construction to be put on Article 5 of the revised project, the President turns to Mr. **LOUIS RENAULT** and requests him to give his opinion on the question under discussion by the committee.

Mr. **Louis Renault** states that he shares Mr. **KRIEGE's** opinion with regard to the meaning of the word "designated," but he prefers this expression to the

phrase "intended to be converted into war-ships," which is open to arbitrary interpretations. The words "capable of being converted" seem to him of still broader scope than the expression "intended to be converted."

His Excellency Mr. **A. Beernaert** concurs in Mr. **RENAULT**'s opinion, pointing out that the word "designation" implies designation by some one or some thing, and consequently presupposes a governmental act or a concrete fact, such, for example, as the vessel's build.

On the proposal of the **President**, Mr. **Heinrich Lammasch** reads his amendment to Article 5 of the English project.

Mr. **Kriege** agrees to this amendment, withdrawing for the moment his proposal to eliminate Article 5.

His Excellency Lord **Reay** rejects Mr. **HEINRICH LAMMASCH**'s amendment. The amendment is put to vote.

Yeas: Germany, Austria-Hungary, Netherlands, Russia, Serbia.

Nays: Argentine Republic, Great Britain, Japan, Norway, Portugal.

Not voting: United States of America, Belgium, France, Italy, Sweden.

[1037] In view of this vote, which does not seem to be a decisive one, the **President** proposes that a vote be taken on Article 5 as it appears in the project of the British delegation.¹

His Excellency Count **Tornielli** asks whether the English delegation would accept the following phraseology for Article 5: "These rules do not affect merchant ships which are destined in advance for conversion into fighting ships."

His Excellency Mr. **A. Beernaert**, in turn, proposes the following form:

These rules do not affect enemy merchant ships which, according to their build, are capable of being converted into fighting ships.

His Excellency Count **Tornielli** having stated that he prefers the English reading to the Belgian amendment and his Excellency Lord **Reay** having accepted the latter text, Mr. **Kriege** insists that a vote be taken on his original proposal that Article 5 be omitted.

The committee proceeds to vote on this proposal.

Voting for the omission of Article 5: Germany, Austria-Hungary, Belgium, Norway, Netherlands, Russia, Serbia, Sweden.

Voting against this omission: Argentine Republic, France, Great Britain, Japan, Portugal.

Not voting: United States of America, Italy.

Article 5 of the English proposal¹ is stricken out.

His Excellency Mr. **Keiroku Tsudzuki** states that he cannot accept the project as a whole except with the express reservation that he does not bind himself with regard to the vessels mentioned in Article 5 of the project.

His Excellency Mr. **Carlos Rodriguez Larreta** makes reservations on the project as a whole.

His Excellency Lord **Reay** recalls that as far as Great Britain is concerned Article 5 is an essential part of the project.

After an exchange of views by the **President**, Mr. **Kriege**, his Excellency Count **Tornielli** and Mr. **Guido Fusinato**, the committee decides to proceed to a vote on the entire project, as just determined by the committee, namely, Articles 1-4 as revised, and Article 5 as originally worded, in accordance with the deliberations of the committee of examination, by the reporter.²

¹ Annex 26.

² Annex 25.

Yeas: Argentine Republic, Austria-Hungary, Belgium, France, Great Britain, Italy, Japan, Norway, Portugal, Serbia, Sweden.

Not voting: Germany, United States of America, Netherlands, Russia.
[1038] His Excellency Mr. Keiroku Tsudzuki states that he has voted for

Article 5, interpreting it in the sense of the observations presented by the reporter in the course of the debates.

The President places on the order of business the question of the conversion of merchant ships into war-ships. He remarks that general discussion on this question is closed and that the committee is to pass upon the project drawn up on the basis of the decisions reached at the preceding meeting.¹

The delegation of the United States of America has, moreover, presented two amendments, which the committee will take into account.

Article 1 of the project is taken up for discussion.

ARTICLE 1

A merchant ship converted into a war-ship cannot have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of a State or recognized Government.

Mr. Guido Fusinato proposes that the concluding words "recognized Government" be omitted, as they seem to him superfluous.

His proposal meeting with no objections, Article 1 is adopted in its revised form.

Article 2 is adopted without change. It reads as follows:

ARTICLE 2

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

The President reads Article 3.

ARTICLE 3

The commander must have a regularly delivered commission, stating that he is in the service of the State and that he holds his rank and his command from the competent naval authorities.

The delegation of the United States of America proposes that the word "naval" be stricken out. The reason for this amendment is that certain officers of the United States navy are not commissioned by the naval authorities.

Mr. Kriege asks permission to go over again the reasons why, in his opinion, Article 3 should not be accepted.

The captain of the converted vessel may not always be able to produce a commission, either because, as the result of unforeseen circumstances, he has never received one, or because the document has been accidentally destroyed or lost, or finally, because the captain has been appointed in the place of the officer named in the document, who for some reason or other has not been able to take command.

I beg you, gentlemen, said he, to look well into the consequences of this provision. It seems to me impossible to make the character of the vessel depend

¹ Annex 9.

upon such a formality. Given the fact that it is not desired to touch [1039] the question whether conversion is admissible on the high seas, we should be very careful not to prejudge this question by subjecting conversion to conditions that it would be difficult to fulfill outside of territorial waters.

Moreover, I ask myself whether the proposed rule would really have any practical importance. As the experts have already told us in the committee, the converted vessel which exercises the right of search on a merchant ship will be little disposed to parley with the captain and produce documentary evidence. If it is necessary to prove the character of the vessel in a neutral port, the natural thing would be to apply to the consular authority of the belligerent at that port. This authority will always be able to furnish the necessary evidence.

For these reasons the German delegation will vote against Article 3 as it stands at present. But it would be disposed to accept it if the provision were given a less absolute character by the addition of the words, "so far as possible."

Captain Behr and Rear Admiral Sperry concur in Mr. KRIEGE's opinion.

His Excellency Lord Reay says that he cannot accept this wording. The commission of the commanding officer of the vessel seems to him to be an essential condition of the legality of the conversion of the merchant ship.

His Excellency Mr. Hammarskjöld proposes that the two conflicting points of view be reconciled by phrasing Article 3 as follows:

The commander must be in the service of the State and duly commissioned by the competent authorities.

His Excellency Count Tornielli, Mr. Kriege, Rear Admiral Sperry, and Captain Behr state that they accept this wording.

His Excellency Lord Reay desires to reserve his opinion for the time being.

No objection having been made, the President states that Article 3 as worded by his Excellency Mr. HAMMARSKJÖLD is adopted. He thanks the first delegate of Sweden for his happy inspiration.

Article 4 is adopted without discussion. It reads as follows:

ARTICLE 4

The crew is subject to military discipline.

Article 5 of the project¹ is read:

ARTICLE 5

Every merchant ship converted into a war-ship must conform itself in its operations to the laws and customs of war.

Rear Admiral Sperry proposes that this article be omitted, as it seems to him to be unnecessary and to constitute an unfortunate distinction applicable to certain merchant ships purchased and regularly commissioned by the Government of the United States as part of its navy.

Mr. Louis Renault remarks that the wording of the project seems to him to be in perfect accord with Article 1 of the 1899 Regulations on the laws and customs of war on land.

[1040] Mr. Heinrich Lammasch is of the opinion that, contrary to Rear Admiral SPERRY's view, the omission of Article 5 would as a matter of

¹ Annex 9.

fact constitute an unfortunate distinction between converted ships on the one hand and war-ships on the other.

The amendment of the delegation of the United States of America is put to vote.

Voting against this amendment: Austria-Hungary, Belgium, France, Italy, Norway, Netherlands, Russia, Serbia, Sweden.

Voting for it: United States of America, Great Britain, Portugal.

Not voting: Germany, Argentine Republic, Japan.

The amendment is not adopted.

ARTICLE 6

A belligerent who converts a merchant ship into a war-ship must, as soon as possible, announce such conversion in the list of war-ships.

Article 6 is adopted without discussion.

The President puts the project as a whole to vote.

The project is unanimously adopted, except for Rear Admiral SPERRY's reservation with regard to Article 5.

The order of business being exhausted, the President announces that Jonkheer VAN KARNEBEEK has just filed his report¹ on the application to naval warfare of the provisions of the 1899 Convention concerning war on land. This report was drawn up in collaboration with his Excellency Mr. BEERNAERT, President of the Second Commission, and propounds a series of questions to be decided by the committee at its next meeting on Monday, September 9.

[1041]

Annex

INVIOLABILITY OF ENEMY PRIVATE PROPERTY AT SEA

REPORT TO THE COMMITTEE OF EXAMINATION²

The status of enemy private property at sea is the second question which was entrusted to the Fourth Commission for examination.

In 1899 the adoption of the principle of inviolability was proposed by the delegation of the United States of America. Its discussion at that time had been set aside, as not figuring in the program; but the *vœu* had been expressed³ to postpone the examination of it to a later Conference.

In compliance with this *vœu* the question has been included in the Russian program⁴ of April 6, 1906. In the *questionnaire*⁵ prepared under the direction of our president, it was expressed in the following form:

¹ See report to the committee of examination annexed to the minutes of the thirteenth meeting of the committee; see also report to the Conference, vol. i, p. 259 [264].

² *Reporter*, Mr. HENRI FROMAGEOT. See also the report to the Conference, vol. i, p. 240 [245].

³ Proceedings of the First Peace Conference, part i, pp. 46-49 [31-33], fifth plenary meeting, July 5, 1899.

⁴ See vol. i, *in initio*.

⁵ *Post*, Fourth Commission, annex 1; *Questionnaire*, question III.

Should the practice now in vogue relative to the capture and confiscation of merchant ships under an enemy flag be continued or abolished?

There were laid before the Commission by the delegations of the United States of America,¹ Austria-Hungary,² Italy,³ the Netherlands,⁴ Brazil,⁵ Denmark,⁶ Belgium⁷ and France⁸ ten propositions, declarations or amendments, to the examination of which the Commission devoted no less than six of its sessions,⁹ in whole or in part.

In the meantime and during this long discussion, the Commission was happy to commend the declaration made on July 17 by his Excellency Mr. DE VILLA URRUTIA, first delegate of Spain, announcing that the Royal Government would henceforth adhere to the Declaration of Paris of 1856 in its entirety.¹⁰

[1042] The proposition of the United States of America, contemplating the absolute abolition of the right of capture, except in cases of the transportation of contraband or a violation of blockade, served as a basis for the exhaustive discussion of the question of inviolability. It was in these words:

The private property of all citizens of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure at sea by the armed vessels or military forces of the said Powers. However, this provision in no way implies the inviolability of vessels which may attempt to enter a port blockaded by the naval forces of the above-mentioned Powers, nor of the cargoes of the said vessels.

All the arguments in favor of inviolability were made with an eloquence and logical force which it would be difficult to surpass.

The American delegation¹¹ mentioned especially the continuity of the so-to-speak historic doctrine of the United States from BENJAMIN FRANKLIN to President ROOSEVELT, from the negotiation of the treaty between the United States and Great Britain in 1783 and the conclusion of the treaty with Prussia in 1785 to the treaty of 1871 with Italy, the efforts made concerning the Declaration of Paris of 1856, the manifestations of public or parliamentary opinion in Germany, the example supplied for more than forty years by the Italian code for merchant marine, the highest authority of the greatest political personages of England, the opinion of numerous eminent jurists in favor of the freedom of enemy commerce.

The analogy with the rules prohibiting pillage in war on land, the trivial practical military advantage that the destruction of commerce gives nowadays, reasons of humanity, the unjustifiable disturbance of transactions which are of as much interest to all neutrals as to the belligerents themselves, the necessity

¹ *Post*, Fourth Commission, annex 10.

² *Ibid.*, annex 17 and minutes of the second meeting of the Commission, June 28, 1907.

³ *Ibid.*, minutes of the second meeting of the Commission, June 28, 1907.

⁴ *Ibid.*, annexes 12, 15 and minutes of the fourth meeting of the Commission, July 10, 1907.

⁵ *Ibid.*, annex 11.

⁶ *Ibid.*, annex 13.

⁷ *Ibid.*, annex 14.

⁸ *Ibid.*, annex 16.

⁹ See *ibid.*, minutes of second meeting, June 28, 1907; third meeting, July 5; fourth meeting, July 10; sixth meeting, July 17; seventh meeting, July 19; twelfth meeting, August 7.

¹⁰ See Fourth Commission, sixth meeting, July 17, 1907.

¹¹ Speech of his Excellency Mr. CHOATE (second meeting of the Fourth Commission, June 28, 1907) and of his Excellency Mr. URIAH ROSE (third meeting, July 5, 1907).

of restricting fighting to the organized military forces of the belligerents and of excluding innocent private parties, the danger of provoking a spirit of vengeance and reprisal, were all set forth in a striking manner.

The impossibility of admitting that war must be prevented or quickly terminated by making it as horrible as possible, the slight influence that commerce and the business world would really have in provoking or preventing war, the heavy burden of naval expenditures caused by the necessity of protecting commerce in case of war—nothing, it may be said, was omitted which might hold the attention.

The delegations of certain countries—notably Brazil,¹ Norway,² Sweden,³ and Austria-Hungary⁴—likewise called attention to the continuity of their doctrine and their policy, and expressed an opinion in conformity with the proposition of the United States.

The delegation of China⁵ likewise supported it without restriction.

[1043] The delegation of Germany,⁶ while admitting that it leaned towards the proposed inviolability, made the reservation that its adoption of this principle depended upon a preliminary understanding as to the problems arising from contraband of war and blockade. The delegation of Portugal declared that it supported this opinion.⁷

Finally, it is proper to state that among the Powers that declared themselves ready to adhere to the doctrine of the United States, a certain number—notably the Netherlands,⁸ Greece,⁹ and Sweden¹⁰—did not conceal their doubts as to the present possibility of a unanimous agreement.

For reasons similar to those expressed in the German reservations, the delegation of Russia¹¹ remarked that, in the opinion of the Imperial Government, the question did not appear to be ripe practically, that its solution presupposed preliminary understandings and an experience which had yet to be gained, that in fact all that could be done at present was to maintain the *status quo*.

The impossibility of separating the question of immunity from that of commercial blockade, the interruption of commerce, less cruel than the massacres caused by war, were the reasons which decided the British delegation,¹² which, nevertheless, declared that its Government would be ready to consider the conclusion of an agreement contemplating the abolition of the right of capture, if such an agreement could further the reduction of armaments.

The Argentine Republic¹³ declared itself categorically in favor of the con-

¹ See the speeches of his Excellency RUY BARBOSA (*ante*, second meeting of the Fourth Commission, June 28, 1907; third meeting, July 5, 1907).

² Declaration of his Excellency Mr. HAGERUP (third meeting, July 5, 1907).

³ Declaration of his Excellency Mr. HAMMARSKJÖLD (fourth meeting, July 10, 1907).

⁴ Declaration of his Excellency Baron VON MACCHIO (second meeting, June 28, 1907; sixth meeting, July 17, 1907).

⁵ Speech of his Excellency Mr. FOSTER (fourth meeting, July 10, 1907).

⁶ Speech of his Excellency Baron MARSCHALL VON BIEBERSTEIN (third meeting, July 5, 1907).

⁷ Observation of his Excellency Marquis DE SOVERAL (third meeting, July 5, 1907).

⁸ Declaration of Mr. DE BEAUFORT (third meeting, July 5, 1907).

⁹ Declaration of his Excellency Mr. CLÉON RIZO RANGABÉ (third meeting, July 5, 1907).

¹⁰ Declaration of his Excellency Mr. HAMMARSKJÖLD (fourth meeting, July 10, 1907).

¹¹ Declaration of his Excellency Mr. TCHARYKOW (third meeting, July 5, 1907).

¹² Declaration of his Excellency Sir ERNEST SATOW (third meeting, July 5, 1907); of his Excellency Sir EDWARD FRY (*ibid*); of Sir ERNEST SATOW (sixth meeting, July 17, 1907).

¹³ Declaration of his Excellency Mr. LARRETA (third meeting, July 5, 1907; fourth meeting, July 10, 1907).

tinuance of the right of capture. Colombia¹ declared that, whatever theoretical considerations might be advanced in favor of the abolition of the right of capture, this right offered an element of national defense, which, with due regard for its national interests, it could not give up.

In the face of these divergent opinions, praiseworthy efforts were made to bring about the adoption of measures which would alleviate the unjustifiable hardships of present practice.

Italy,² while declaring that it upheld the principle, which it had sanctioned in its laws, expressed the desire, in case this principle could not yet be accepted by the Conference, that intermediate measures be presented and discussed before the discussion was closed.

Brazil³ proposed that in connection with an agreement upon inviolability, which it desired to see reached, the Powers should agree to apply to naval warfare and property at sea the provisions of Articles 23, 28, 46, 47, and 53 of the Convention of 1899 respecting the laws and customs of war on land.

Belgium⁴ proposed that, instead of striving for a result which there was little hope of reaching at present, the States should agree to lessen the [1044] hardships of capture, by substituting for confiscation simple detention or sequestration, to set the crews free, to prohibit the destruction of prizes, and, finally, to adopt a set of rules relative to the rights of belligerents in naval warfare as to enemy private property.⁵

In the same spirit the Netherland delegation, after having proposed⁶ that every vessel carrying a passport proving that it will not be used as a war-ship be exempt from capture, declared that it supported, with the reservation of a few modifications, the project submitted by the delegation of Belgium.⁷

Finally, the French delegation,⁸ indicating its entire sympathy with the liberal spirit of the proposed doctrine, declared that it was ready to support it if a unanimous agreement could be reached; but as such an agreement did not seem possible at present, and as the solution of this question depended upon the solution of other questions no less delicate, the French delegation proposed to condition the continuance of the present practice upon respect for the conditions of modern war as waged between State and State. This delegation remarked that, within these limits and from the point of view of law and equity, the hindrance or interruption of enemy commerce, as a means of paralyzing the business activity of the enemy, is perfectly justifiable, that this is a powerful means of coercion, and is legitimate so long as it is directed against the resources of the State and not against private individuals, and that it may not be a source of gain for individuals. With these considerations in mind, a double *vœu* was proposed with a view to generalizing the abolition of the old custom of the capturing crews sharing in the prizes, and to making the States share in the losses resulting from capture.

¹ Speech of his Excellency Mr. SANTIAGO PÉREZ TRIANA (*ante*, third meeting of the Fourth Commission, July 5, 1907).

² Declaration of his Excellency Count TORNIELLI (second meeting, June 28, 1907).

³ See the speeches previously cited by his Excellency Mr. RUY BARBOSA.

⁴ Speech of his Excellency Mr. BEERNAERT (fourth meeting, July 10, 1907); of his Excellency Mr. VAN DEN HEUVEL (*ibid.*).

⁵ See *post*, Fourth Commission, annex 14, previously cited.

⁶ Declaration of his Excellency Vice Admiral RÖELL (fourth meeting of the Fourth Commission, July 10, 1907).

⁷ See minutes, sixth meeting, July 17, 1907.

⁸ Speech of Mr. LOUIS RENAULT (third meeting, July 5, 1907).

Such were the circumstances under which a vote was taken on this important question.

The proposition of the United States of America (inviolability), which was first put to vote, obtained from the forty-four States represented, 21 yeas, 11 nays, 1 abstention, 11 States not answering on roll-call.¹

In the absence of a sufficient number of votes to ensure a unanimous agreement, or at least an almost general agreement, the Commission took up the Brazilian proposition (assimilation to land warfare). As the consideration of this proposition resulted in an equal division of those voting and a large number of abstentions,² the delegation of Brazil withdrew it.³

[1045] The Belgian proposition (substitution of sequestration for confiscation), after having received a majority when taken under consideration,⁴ could not, upon the discussion of the articles, obtain a support which was considered sufficient, and the Royal delegation requested its withdrawal.⁵

In view of the diversity of opinions expressed, and in the hope of inducing all the delegations to vote for the same measure, the president of the Commission proposed that a *vœu* be adopted to the effect that henceforth, at the beginning of hostilities, the Powers should declare of their own accord whether and under what conditions they had decided to renounce the right of capture.⁶

But even on this point objections were raised in various quarters, and this compromise *vœu* was withdrawn.

As a result the Commission had to pass upon the double *vœu* proposed by the French delegation (abolition of sharing in the prize, and the State sharing in the losses by capture). This *vœu*,⁷ in spite of an amendment proposed by the delegation of Austria-Hungary,⁸ likewise resulted in an indecisive vote and several abstentions.⁹

Such is the summary of the long discussion of one of the most important questions in the program of the Fourth Commission. I have endeavored to give a faithful account, without, however, taking up too much of your time. I

¹ Minutes, sixth meeting, July 17, 1907. Thirty-three States out of the forty-four represented at the Conference took part in the vote. The twenty-one States that voted in favor are: Germany (with the above-mentioned reservations), United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, China, Cuba, Denmark, Ecuador, Greece, Haiti, Italy, Norway, Netherlands, Persia, Roumania, Siam, Sweden, Switzerland, Turkey; the eleven States that voted against are: Colombia, Spain, France, Great Britain, Japan, Mexico, Montenegro, Panama, Portugal, Russia, Salvador; Chile abstained.

² See *ante*, minutes of the seventh meeting of the Fourth Commission, July 19, 1907. Twenty-five States took part in the vote. Thirteen States voted *for*; twelve States voted *against*.

³ Declaration of his Excellency Mr. RUY BARBOSA (*ibid.*).

⁴ Minutes, seventh meeting, July 19, 1907. Twenty-eight States took part in the vote: twenty-three States voted *for*; three States voted *against*; two States abstained.

⁵ Minutes, seventh meeting, July 19, 1907. Thirty States took part in the vote on Article 1 of the proposition. Fourteen States voted *for*; nine States voted *against*; seven States abstained. See the declaration of withdrawal of his Excellency Mr. BEERNAERT (*ibid.*).

⁶ Speech of his Excellency Mr. MARTENS, president, (seventh meeting, July 19, 1907).

⁷ *Post*, Fourth Commission, annex 16.

⁸ *Ibid.*, annex 17.

⁹ Minutes, twelfth meeting, August 7, 1907. The first part of the *vœu* tending to generalize, in the laws of the various countries, the abolition of the right to share in prizes allowed captor crews gave rise to the following vote: thirty-four States took part in the vote; sixteen States voted *for*; four States voted *against*; fourteen States abstained. The second part, tending to have introduced in the various legislations the principle of the State's sharing in losses by capture, gave rise to the following vote: thirty-four States took part in the vote; seven States voted *for*; thirteen States voted *against*; fourteen States abstained.

should have liked to be able better to express the deep impression which, in spite of everything, the fine speeches which it was our fortune to hear did not fail to make upon each one of us. If it appears that a continuance of the present state of things is to be the result of this deliberation, we may be permitted to believe, as was said by the eminent first delegate of Belgium, his Excellency Mr. BEERNAERT, that a future agreement is not at all impossible.

[1046]

THIRTEENTH MEETING

SEPTEMBER 9, 1907

His Excellency Mr. **Martens** presiding.

On opening the meeting, the **President** asks whether any one has any remarks to make on the minutes of the twelfth meeting.

His Excellency Lord **Reay** states that the British delegation accepts the project on the conversion of merchant ships into war-ships,¹ but wishes to modify the wording of Article 3 as follows:

The commander must be duly commissioned and in the service of the State.

His name must appear on the official list of the officers of the fighting fleet.

Again, the British delegation deems it necessary to mention in the aforesaid text the fact that it has been impossible to settle the question of the place of conversion. To this end he proposes that the following preamble be inserted after the heading:

Whereas, several of the high contracting parties will desire, in time of war, to incorporate vessels of their merchant marine in their naval fleets;

Whereas, it is consequently desirable to define the conditions under which this operation may be effected, in so far as the rules in this regard are generally accepted;

And whereas the high contracting parties have been unable to come to an agreement on the question whether the conversion of a merchant ship into a war-ship may take place upon the high seas, it is understood that the question of the conversion remains outside the scope of this agreement and is in no way affected by the statement of the following rules:

Finally, the British delegation proposes that Article 5 of the project on **days of grace**² adopted by the committee be modified as follows:

These regulations do not affect merchant ships whose build shows that they can be converted into war-ships.

After an exchange of views on Lord **REAY**'s declaration, the committee decides that the proposals of the British delegation shall be inserted in the reports of the committee to the Fourth Commission.

[1047] No other observations having been made, the minutes of the twelfth meeting of the committee are approved.

¹ Annex 9.

² Annex 26.

The **President** states that the first matter on the order of business is the examination of **Jonkheer VAN KARNEBEEK'S** (reporter's) report¹ on the application of the 1899 Convention relative to war on land to naval warfare. The **PRESIDENT** requests the members of the committee to pass upon the questions brought up by this report. For his part, he thinks that the Conference has no longer time to undertake the labor necessitated by an examination of the articles of the 1899 Convention capable of being applied to naval warfare. Nevertheless the committee will perhaps want to indicate the portions of that Convention which can, without modifying their substance, be adapted to war at sea, such as Chapter II of the first section, on prisoners of war.

Captain Behr is of the **PRESIDENT'S** opinion as to the inadvisability of a complete revision of the 1899 Convention. The chapter on prisoners of war might certainly be made applicable to war at sea with the exception of Article 12, which requires very careful consideration.

Mr. Guido Fusinato is of the opinion that a single part of the 1899 Convention cannot be studied to advantage disconnected from the rest and therefore he would prefer to refer the entire question to the next Conference.

His Excellency **Mr. Keiroku Tsudzuki** concurs in this view.

The **President** asks the committee whether the question should not be referred to a subsequent Conference.

His Excellency **Sir Ernest Satow** says that the committee greatly appreciates **Jonkheer VAN KARNEBEEK'S** work, but there is not sufficient time left to discuss it. The committee can nevertheless express the hope that the principles of the 1899 Convention will be introduced into naval warfare.

His Excellency **Mr. A. Beernaert** supports the opinion of his Excellency **Sir ERNEST SATOW**. He believes that the Commission should recommend that the Powers apply, as far as possible, the general principles of the 1899 Convention to naval warfare.

Mr. Louis Renault states that after a study of **Jonkheer VAN KARNEBEEK'S** report, he has come to the same conclusion, that it would be desirable to make applicable to naval warfare the general principles established by the 1899 Conference with regard to war on land.

Mr. Guido Fusinato asks for certain explanations on the modifications proposed by the British delegation concerning days of grace and the conversion of merchant ships into war-ships. The committee has taken no stand in regard to these questions; it would therefore be well to have it determine in what way it intends to proceed. It can present to the Commission the result of its deliberations, but it can also—and this would seem to be preferable—come to a decision itself and present to the Commission a draft project.

[1048] **Mr. Fromageot** thinks that, when the report is read, the committee can consider whether or not it should be modified. It can do what it has already done in the matter of fishing boats.

The committee concurs in this view.

His Excellency **Mr. A. Beernaert** lays before the committee the following resolution concerning the application to naval warfare of the Regulations of the 1899 Convention relative to war on land:

The Commission requests the Conference kindly to express the *vœu* that

¹ Annex to these minutes; see also report to the Conference, vol. i, p. 259 [264].

the Powers will, pending the adoption of special regulations, apply, as far as possible, to war at sea the principles of the 1899 Convention concerning war on land.¹

His Excellency Mr. Hagerup proposes a still further step forward by doing what the 1899 Conference did in the matter of bombardment: express the *vœu* that the question will be included in the program of the next Conference.

His Excellency Mr. A. Beernaert, in response to the desire expressed by his Excellency Mr. HAGERUP, proposes that his resolution be supplemented by the following paragraph:

It would, in its opinion, be desirable that the elaboration of these regulations figure in the program of the next Conference.

The President believes that he is interpreting the sentiments of the committee in thanking Jonkheer VAN KARNEBEEK for his interesting report on the application to naval warfare of the principles of the 1899 Convention concerning war on land (*loud applause*) and in expressing similar thanks to his Excellency Mr. BEERNAERT. (*Loud applause.*)

In conformity with the order of business, the PRESIDENT takes up the question of the destruction of neutral prizes, which has already been the subject of discussion by the committee.

Mr. Kriege makes the following remarks on this subject:

I do not wish to re-open the discussion which took place in our midst on the opinion of the English prize judge, Lord STOWELL, with regard to the destruction of neutral prizes. I desire, however, to make known to the members of the Commission the contents of Professor HOLLAND's letters to which I referred in the course of that discussion. I have the honor to file copies thereof and I beg your Excellency to have them printed and distributed.²

Brigadier General Davis:

The delegation of the United States of America desires to submit the following observations in support of its proposal³ presented on July 19 and reading as follows:

If for any reason whatever a captured neutral vessel cannot be brought to adjudication, such vessel must be released.

This proposal is identical with that submitted by the delegation of Great Britain on June 24.⁴

Destruction of a neutral prize by the captor is prohibited. The captor must release all neutral vessels that he is unable to bring before a prize court.

[1049] For reasons that will be explained later, the delegation of the United States finds itself unable to support any of the proposals submitted which authorize the destruction of neutral prizes in naval warfare. It admits that the present rules of international law authorize the destruction of merchant ships and cargoes belonging to the enemy, but it is unable to admit that such a rule applies to a neutral vessel or to neutral goods captured while engaged in contraband trade or in trade with a blockaded port in time of war.

A neutral subject, even though engaged in an unlawful trade, is clearly

¹ See vol. i, p. 269 [275].

² Annex 43.

³ Annex 42.

⁴ Annex 39.

entitled, so far as his person and property are concerned, to the presumption of innocence. The vessel and goods that constitute his enterprise are *prima facie* exempt from capture and confiscation until it is established judicially that they are subject to capture and condemnation. He may not therefore be deprived of his rights of ownership except as the result of a decision by a court having the necessary jurisdiction to decide whether his property is liable to capture. A prize court is such a court: it has full jurisdiction to decide the question of liability to capture, and its decision in a case that is properly brought before it is binding not only on the parties concerned but also on their Governments.

Therefore until such adjudication has taken place, title cannot be taken away and the belligerent captor who destroys the property of a neutral acts contrary to the rules of international law as they have been understood and applied for a century or more by the Governments of England and of the United States, and by other Powers who are in reality of the same opinion regarding the liability of neutral property to capture.

The principle which this delegation upholds is clearly set forth in the case of the *Acteon*¹ and the *Felicity*,² which were decided by Sir WILLIAM SCOTT in 1815 and 1819. A similar opinion was held by the same authority in an earlier case, the *Zee Star*,³ which was decided in 1801. Without giving this decision in full, the following quotation will show the opinion of the court in the case of the *Felicity*:

Taking this vessel and cargo to be merely American, the owners could have no right to complain of this act of hostility, for their property was liable to it, in the character it bore, at the period, of enemy's property. There was no doubt that *The Endymion* had a full right to inflict it if any grave call of public service required it. Regularly a captor is bound by the law of his own country, conforming to the general law of nations, to bring in for adjudication, in order that it may be ascertained whether it be enemy's property; and that mistakes may not be committed by captors, in the eager pursuit of gain, by which injustice may be done to neutral subjects, and national quarrels produced with the foreign States to which they belong. Here is a clear American vessel and cargo, alleged by the claimants themselves to be such, and consequently the property of enemies at that time. They share no inconvenience by not being brought in for the condemnation, which must have followed if it were mere American property; and the captors fully justify themselves to the law of their own country, which prescribes the bringing in, by showing that the immediate service in which they are engaged, that of watching the enemy's ship of war *The President*, with intent to encounter her, though of inferior force, would not permit them to part with any of their own crew to carry her into a British port. Under

this collision of duties nothing was left but to destroy her, for they [1050] could not, consistently with their general duty to their own country, or indeed its express injunctions, permit enemy's property to sail away unmolested. If impossible to bring in, their next duty is to destroy enemy's property. Where doubtful whether enemy's property, and impossible to bring in, no such obligation arises, and the safe and proper course is to dismiss. Where it is neutral, the act of destruction cannot be justified to the neutral owner, by the gravest importance of such an act to the public service of the captor's own State; to the neutral it can only be justified, under any such cir-

¹ 2 Dodson, 48.

² *Ibid.*, 381.

³ 4 Robinson, 71.

cumstances, by a full restitution in value. These are rules so clear in principle and established in practice, that they require neither reasoning nor precedent to illustrate or support them.¹

The same opinion that the destruction of a neutral prize is an act unjustified by international law and for which the captor Governments are entirely answerable was held by Dr. LUSHINGTON in 1855 in the case of the *Leucade*² and by the Supreme Court of the United States in the case of the *Dos Hermanos*,³ and in the case of *Jecker v. Montgomery*.⁴ This is the opinion held at present by the great non-judicial authorities and is set forth in the resolutions on this subject adopted by the Institute of International Law at its Heidelberg session in 1887. This action is characteristic in view of the fact that resolutions to the opposite effect were adopted at the Turin session in 1882 and the Munich session in 1883; but these were formally reversed as regards neutral vessels and their cargoes at the Heidelberg conference of 1887.

Aside, however, from the legal aspect of the case, there are questions of justice and humanity which must not be lost sight of in considering the question of the liability of neutral prizes to destruction by a belligerent captor.

The build of modern war-ships is such as to afford poor accommodations for prisoners, particularly for neutral subjects who are neither belligerent combatants nor even the legal enemies of the captor and should not therefore be deprived of their liberty as prisoners of war: Aside from this lack of accommodations, prisoners thus detained on board war-ships are nowadays exposed to much greater risks in battle than in the days when the fleets of the world were built of wood and were propelled with sails, as was the case when Sir WILLIAM SCOTT's decisions were rendered at the beginning of the last century. The neutral subject who engaged in contraband trade is liable to the confiscation of his illegal enterprise, but he is not liable, and never has been considered liable, to the loss of his life nor to the infliction of corporal punishment for having engaged in a trade which is forbidden simply under penalty of confiscation and which does not involve any injury or destruction of life.

The proposal submitted by the delegation of the United States furnishes a just and humanitarian method of treatment for neutral vessels, their officers and crews, which a belligerent captor is unable to bring before a prize court for adjudication. Its application makes it possible for a belligerent to protect himself against the consequences of unlawful commerce, while interfering as little as possible with the rights and immunities of neutral States and their subjects.

In conclusion, I desire to add a word on the subject of the authority of a decision rendered by a competent prize court in the exercise of its legal jurisdiction. The law that is applied by prize courts is the law of nations, and the decisions that are rendered by them are not only binding upon the parties, but constitute precedents which have weight as interpretations of international law. They are in no way the opinions of individuals and cannot be compared to the opinions of jurists and writers.

In deciding the case of the *Maria*, Sir WILLIAM SCOTT very truly said concerning the law applied in the decision of prize cases, as well as the character and effect of their judgment on the decision in question:

¹ The *Felicity*, 2 Dodson, 381.

² Spinks, *The Ecclesiastical and Admiralty Reports*, 1855, vol. ii, p. 228.

³ 10 Wheaton, 306.

⁴ 13 Howard, 498.

In forming that judgment, I trust that it has not escaped my anxious recollection for one moment what it is that the duty of my station calls for from me—namely, to consider myself as stationed here, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent States, some happening to be neutral and some to be belligerent. The seat of judicial authority is, indeed, locally here, in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm; to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden, as a neutral country, which he would not admit to belong to Great Britain in the same character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the universal law upon the question. . . .¹

If a prize court of the State "A" decides the case of a prize flying the flag of the State "B," a neutral State, "by reference to the well-established principles out of which the rule of international law has been gradually shaped," it exercises functions comparable to those discharged by any judge of law. If, however, it professes itself, or is in fact unable, to challenge the legality of a manifesto promulgated *ad hoc* by its Government, *e.g.*, a list of contraband articles, it "ceases to administer law, and becomes the creature of a system which is the very negation of law."²

The practice of the Government of the United States in the matter of the destruction of neutral prizes has been in conformity with the rule of international law as set forth by Sir WILLIAM SCOTT and by the Supreme Court of the United States. This Government is not ready to abandon the practice thus established, and this delegation cannot advocate the adoption of a rule which accords neutral vessels and their cargoes a treatment less favorable than that which they enjoy at present.

The President recalls that the committee has decided that the action which it shall take in the matter of the destruction of neutral prizes will depend upon what the Third Commission does with regard to allowing belligerents to bring their neutral prizes into neutral ports, to be kept there under sequestration.

Mr. Guido Fusinato states that his Excellency Count TORNIELLI would like to inform the committee himself with regard to the action taken on this subject by the Third Commission, but being detained on another Commission, his Excellency Count TORNIELLI has charged Mr. GUIDO FUSINATO to do so for him. The Third Commission has examined the question of the stay of neutral prizes in neutral ports and has taken provisional action thereon, as appears from Article 23. This article, which makes no distinction between neutral prizes and enemy prizes, recognizes that neutral Powers have the right, but not the duty, of receiving prizes in their ports. His Excellency Count TORNIELLI thinks that the acceptance of the English proposal by the Italian delegation [1052] will depend upon the action that is taken with respect to Article 23,³ even though this article creates only a privilege and not a duty.

¹ The *Maria*, 1 C. ROBINSON, 350; the *Flad Oyen*, *ibid.*, 135; 30 hogsheads of sugar. 9 Cranch, 191; *Cushing Administrator v. the United States*, 22 Court of Claims, 1.

² Smith and Sibley, *International Law*, p. 3.

³ See *ante*, Third Commission, annex 63.

His Excellency Sir **Ernest Satow** thinks that the committee of the Fourth Commission is not competent to discuss Article 23. It can only vote on the British proposal,¹ reserving its vote according to the action taken with regard to this article.

Mr. **Guido Fusinato** recalls that there has been question of uniting the two committees of the Fourth and of the Third Commissions to discuss the two questions which depend upon one another. He emphasizes the necessity for this union.

The **President** thought that the committee of the Fourth Commission had postponed its decision on the destruction of neutral prizes until after the Third Commission had taken action on the stay of prizes in neutral ports.

Mr. **Guido Fusinato** requests that the two committees meet tomorrow to examine the two questions.

Mr. **Louis Renault** says that the account given by Mr. **FUSINATO** concerning the point reached on the question by the Third Commission is entirely correct. The committee of the Third Commission is about to hear the second reading of the project concerning the rights and duties of neutrals on the sea, but as the matter must be brought to a close, the committee of examination of the Fourth Commission might attend the meeting of the committee of the Third Commission in order to settle the two questions which depend upon each other.

The **President** asks whether the committee concurs in this proposal.

His Excellency Sir **Ernest Satow** asks what the method of procedure will be. Will the two committees assemble to vote on Article 23 and will they then postpone the question of the destruction of neutral prizes to a subsequent meeting, or will they continue their discussions on this latter point?

Mr. **Guido Fusinato** thinks that it is preferable to combine the two questions. As a matter of fact, practically the same Powers are represented in the two committees, and they can therefore come to a decision on the points within their scope.

His Excellency Sir **Ernest Satow** remarks that China and Spain are represented on the committee of the Third Commission, but not on that of the Fourth.

Mr. **Guido Fusinato** considers it none the less necessary to have a single discussion of the two questions and to refer them to the two committees.

The committee concurs in this proposal.

[1053]

Annex

LAWS AND CUSTOMS OF NAVAL WARFARE

REPORT TO THE COMMITTEE OF EXAMINATION ²

The *questionnaire* serving as a basis for the discussions of the Fourth Commission includes as its final question the following:

Within what limits are the provisions of the Convention of 1899 relative to the laws and customs of war on land applicable to the operations of naval warfare?

¹ Annex 39.

² Reporter: Jonkheer VAN KARNEBEEK. See also the report to the Conference, vol. i, p. 259 [264].

It was with respect to this question that the committee of the said Commission asked the undersigned, at its ninth session, to make a report.

His Excellency Mr. BEERNAERT, who presided over the work of the first sub-commission of the Second Commission, relating to the revision of the regulations respecting the laws and customs of war on land, has been good enough to co-operate with him.

It follows from the text of the *questionnaire* that the scope of the report is limited by the compass of the Convention of 1899 and the Regulations annexed to it, with the modifications that the Conference has just made in them. This report, therefore, will not take into consideration the question whether there may not be other rules, not included in the Convention, which might be applicable to naval warfare.

This being so, and the provisions of the Regulations respecting war on land thus forming the subject of the present examination, it would perhaps seem to be necessary first to study the Regulations as a whole in order to determine their guiding principles, and then to consider whether they are applicable to naval warfare or not. But time is pressing, and it seems desirable that this report should be brief. We shall therefore take up immediately the provisions of the Regulations of 1899 in order, and this work, following above all practical lines, will be confined to pointing out the problems without any claim to [1054] solving them.

ANNEX TO THE CONVENTION

REMARKS

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND¹

SECTION I.—*On Belligerents*

CHAPTER I.—*The Qualifications of Belligerents*

ARTICLE 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;

2. That they have a fixed distinctive emblem recognizable at a distance;

3. That they carry arms openly; and

4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

ARTICLE 1

This article, as its history shows, is a compromise between the prohibition of irregular warfare and the absolute right to co-operate in national defense. Inasmuch as in the present state of affairs there can be no further thought of irregular hostilities on the seas, the considerations which prompted Article 1 do not appear to be applicable to naval warfare. It is none the less desirable, however, to determine how belligerent character is established and to fix the conditions which war-ships must fulfill in order to be able to act and to be treated as such.

Since, by virtue of the Declaration of Paris of 1856, the right of capture and the right of search may only be

¹ Changes proposed by the Second Commission are indicated by italics.

exercised by agents of the State and under its responsibility, the conditions necessary for the exercise of these rights by vessels in process of conversion must be clearly established. It would seem that the rules relative to the conversion of merchant ships into war-ships, upon which the committee is to decide and which have already been the subject of a special examination, might find their place here.

ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if *they bear arms openly* and they respect the laws and customs of war.

[1055] ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.—*Prisoners of war*

ARTICLE 2

Not applicable.

ARTICLE 3

Not applicable.

CHAPTER II

General remarks

1. It would seem that this chapter as a whole is, *mutatis mutandis*, applicable to naval warfare. Nevertheless it will be necessary to determine what regulations, orders, and tariffs are applicable to it. Will it be those of the *army* of the State into whose power the naval prisoners of war have fallen, or those of the navy, if there is one? Must a distinction be made according to the place where the prisoners are confined—on a vessel or on land? The wording will or will not require

modification according to the solution given to this question.

2. It must, moreover, be recalled here that the treatment of the crews of captured enemy merchant ships is governed by a special project. According to the last project upon which the committee of examination decided, these crews shall not be made prisoners of war, unless the vessel has taken part in the hostilities, or unless, except in the case of the neutral members of the crew, not including the officers, the promise mentioned in this project was refused. Thus, in principle, the present chapter does not seem to be susceptible of application to the crews of captured enemy merchant ships, and it would be a mistake to insert in it the provisions of the aforesaid project. On the other hand, it is evident that this chapter will be applicable to them in the cases contemplated by the two above-mentioned conditions.

3. The treatment of the crews of captured neutral merchant ships has not been the subject of study by the committee of examination. It would seem to be necessary to determine their position likewise. *A fortiori* the fundamental principle should be not to consider them prisoners of war.

The committee will examine whether there is occasion to provide for certain cases in which these crews might not claim their freedom.

ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ARTICLE 4

Applicable, except that the following word should be omitted: "horses" (paragraph 3), and the word "crews" should be substituted for the word "corps" (paragraph 1).

[1056]

ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety, *and while the circumstances which necessitate the measure continue to exist.*

ARTICLE 6

The State may utilize the labor of prisoners of war according to their rank and aptitude, *officers excepted.* The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army, *or, if there are no rates in force, at a rate suitable for the work done.*

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE 5

Applicable, with the insertion of the word "vessel" after the word "camp."

ARTICLE 6

Applicable, except as modified by the general remark above, in so far as paragraph 3 is concerned.

ARTICLE 7

Applicable, except as to whether prisoners should be treated as soldiers or as sailors of the capturing State.

ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

[1057] Escaped prisoners who are re-taken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honor, scrupulously to fulfill, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

ARTICLE 11

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 8

Applicable, except as modified by the above remark.

ARTICLE 9

Applicable.

ARTICLE 10

Applicable.

ARTICLE 11

Applicable.

ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

[1058]

ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual re-

ARTICLE 12

It follows from the general remarks above that this article cannot apply to the crews of merchant ships, enemy or neutral, as these crews are not in principle made prisoners of war. It must be observed, however, that the position of officers of war-ships who are set free on parole will—according to the draft regulations adopted by the committee be more favorable than that of neutral officers of enemy merchant ships, who must promise not to serve on an enemy vessel, even a merchant ship, as long as the war lasts.

The committee will perhaps consider whether this is not an anomaly which should be removed, by substituting the words "serving on an enemy ship," for the words "bearing arms . . . honor," or whether it should be retained by analogy of enemy merchant ships to enemy crews.

ARTICLE 13

Does this case occur in war at sea?

If so, it would be necessary to change the enumeration in applying the same treatment.

ARTICLE 14

Applicable.

turn for each prisoner of war. *The individual return shall be sent to the Government of the other belligerent after the conclusion of peace; the bureau must state in it the regimental number, the name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.* It is kept informed of internments and transfers, as well as of *releases on parole, exchanges, escapes*, admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have *been released on parole, or exchanged, or who have escaped*, or died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ARTICLE 15

Applicable.

[1059] ARTICLE 16

Information bureaus enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

ARTICLE 17

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its own army are entitled, the amount to be refunded by their Government.

ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

ARTICLE 16

Applicable.

ARTICLE 17

Applicable, except that the words "its navy" (if there is one) for the words "its army."

ARTICLE 18

Applicable.

ARTICLE 19

Applicable.

ARTICLE 20

Applicable.

CHAPTER III.—*The sick and wounded*

ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

SECTION II.—*On Hostilities*CHAPTER I.—*Means of injuring the enemy, sieges, and bombardments*

ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

[1060] ARTICLE 22 *a*

It is forbidden to force ressortissants of the hostile party to take part in the operations of war directed against their country, even if they were in its service before the commencement of the war.

ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden:

(a) To employ poison or poisoned weapons;

(b) To kill or wound treacherously individuals belonging to the hostile nation or army;

(c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;

(d) To declare that no quarter will be given;

(e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the

ARTICLE 21

Omit.

ARTICLE 22

Applicable.

ARTICLE 22 *a*

It would perhaps be advisable to adapt the principle contained in this article to naval warfare in so far as boats engaged in coastal fishing are concerned, which it is proposed by the committee to exempt from capture.

ARTICLE 23

Applicable, except letter *g* and the substitution in letter *f* of the words "Convention for the adaptation to maritime warfare of the principles of the Geneva Convention" for the words "Geneva Convention."

enemy, as well as the distinctive badges of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(h) *To declare abolished, suspended, or inadmissible in a court of law the private claims of ressortissants of the hostile party.*

ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

ARTICLE 25

It is forbidden to attack or bombard *by any means whatever* towns, villages, dwellings or buildings that are not defended.

ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, *and historic monuments*, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 28

It is forbidden to give over to pillage even a town or place taken by storm.

ARTICLE 24

Applicable.

ARTICLE 25

It will be required to insert here the regulations concerning bombardment by naval forces in time of war, adopted by the Conference.

ARTICLE 26

See remark on Article 25.

ARTICLE 27

See above: ditto.

ARTICLE 28

Ditto.

CHAPTER II.—*Spies*

ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

ARTICLE 30

A spy taken in the act shall not be punished without previous trial.

ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III.—*Flags of truce*

ARTICLE 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer,

ARTICLES 29, 30, AND 31

May boats engaged in coastal fishing act as spies? And, since it depends on the belligerent to order them away, is there occasion to provide for this contingency? It will be for those technically qualified to consider the applicability of this chapter.

ARTICLES 32-34

In naval warfare cartel ships take the place of parlementaires in land warfare. The principles set forth in this chapter appear to be applicable to such ships. Moreover, the distinctive marks of these vessels must be stipulated. Perhaps there is occasion to inquire, in

the flag-bearer and the interpreter who may accompany him.

addition, under what limitations these vessels may be provided with crews and armaments.

[1062] ARTICLE 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

ARTICLE 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV.—*Capitulations*

ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honor.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices*

ARTICLE 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ARTICLE 37

An armistice may be general or local. The first suspends the military operations of the belligerent States every-

ARTICLE 35

In case of surrender there would be occasion to apply this provision.

ARTICLE 36

Applicable.

ARTICLE 37

Applicable.

where; the second only between certain fractions of the belligerent armies and within a fixed radius.

ARTICLE 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

ARTICLE 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theater of war with the populations and between them.

ARTICLE 40

Any serious violation of the armistice by one of the parties [1063] gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ARTICLE 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

SECTION III.—*On military authority over the territory of the hostile state*

ARTICLE 38

Applicable, with the substitution of the words "both military and naval forces" for the word "troops."

ARTICLE 39

Not applicable.

ARTICLE 40

Applicable.

ARTICLE 41

Not applicable.

General remark

The preliminary question is whether there can be territorial occupation in naval warfare. Not occupation by disembarked troops, but by naval forces themselves. It is believed that this question should be answered in the affirmative, although the occupied territory will necessarily be limited as a general thing, and although the case will not often occur. Does such an oc-

cupation belong, in law, to naval warfare or to war on land? The answer appears uncertain, the more so for the reason that war at sea, as bombardments prove, does not exclude operations against the coast.

ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ARTICLE 43

The authority of the legitimate Power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

ARTICLE 44 a

It is forbidden to force the inhabitants of occupied territory to furnish information about the hostile army or its means of defense.

[1064] ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

ARTICLE 46

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ARTICLE 42

This definition appears to be susceptible of application to occupation by naval forces. A situation of fact resulting from certain hostile operations is involved.

ARTICLE 43

Applicable.

ARTICLE 44

Applicable.

ARTICLE 44 a

Applicable; see the remark with respect to Article 22 a.

ARTICLE 45

Applicable.

ARTICLE 46

Paragraph 1 applicable.

Paragraph 2. It is a question of determining the status of private prop-

erty, which would not be inviolable merely for the reason that it happened to be on the seas. In case of territorial occupation by naval forces, should the seizure and confiscation of such property as would be respected in case of occupation by an army be admitted?

Should the legal effect of the occupation be different according to the character of the forces of occupation?

In so far as *vessels* are concerned, it is evident that those whose exemption from capture is generally recognized, such as barks engaged in coastal fishing, are not under consideration. It would seem that the same should be true in regard to vessels which are not intended for ocean navigation. There remain vessels intended for ocean navigation properly so called, whether they are used for commerce, for pleasure cruises, or for any other purpose. In case of occupation, should the law of naval warfare take precedence in all its severity over the law of land warfare, with respect to such vessels?

Or, following Article 53 of the Convention of 1899 and the draft regulations concerning the treatment of enemy merchant ships on the outbreak of hostilities, would the right of detention and of requisition be sufficient, with the exception, nevertheless, of merchant ships designed in advance for conversion into war-ships?

In so far as *goods* are concerned, provision must be made: (1) for the case of enemy goods and neutral goods constituting contraband of war which are on board an enemy vessel; (2) for the case of contraband on board a neutral vessel. It is evident, as to the first case, that the goods will receive the same treatment as the vessel. As to the second case, the committee will have to decide whether or not the presence of contraband, under the circumstances in question, justifies the capture and confiscation of the vessel. But there is

furthermore the preliminary question whether sufficient legal reasons really exist to subject goods found on board vessels in port to treatment different from that to which goods are subjected which are stored in warehouses, piled on docks, etc. It would seem that there can be no ground either under the law of land warfare or under the law of naval warfare for seizing goods under the latter circumstances. Is the fact of their being carried on board a vessel sufficient reason to cause them to lose their inviolability?

ARTICLE 47

Pillage is formally forbidden.

ARTICLE 47

Applicable.

ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ARTICLE 48

Applicable.

ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ARTICLE 49

Applicable, with the substitution of the words "of the fleet" for the words "of the army."

ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

ARTICLE 50

Applicable.

ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief (*général en chef*).

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

[1066] ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, and *payment shall be arranged as soon as possible*.

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

All means of communication and of transport operated on land, at sea, and in the air, for the transmission of persons, things and news, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve

ARTICLE 51

Applicable, with the substitution of the word "*commandant*" for the word "*général*."

ARTICLE 52

Applicable.

ARTICLE 53

Paragraph 1. Applicable, with the substitution of the words "naval force of occupation" for the words "army of occupation."

Paragraph 2. As regards the modifications to be made with respect to vessels, see the remarks under Article 46.

for military operations, but they must be restored and compensation fixed when peace is made.

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

ARTICLE 54

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

ARTICLE 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

ARTICLE 56

The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or willful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

[1067] FINAL ARTICLE

A belligerent party which shall violate the provisions of the present regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Paragraph 3. Applicable.

ARTICLE 54

Applicable if such a case should arise, which is unlikely.

ARTICLE 55

Applicable.

ARTICLE 56

Applicable, with the substitution of the words "shall be inviolable" for the words "shall be treated as private property."

FINAL ARTICLE

Applicable.

It follows from the foregoing examination that the provisions of the Convention of 1899 are to a great extent of a nature to be applied to naval warfare, and in effect these provisions are inspired by principles which are applicable not to war on land alone. Nevertheless, the examination likewise proves that in several respects the application would necessitate not only changes of form, but also modifications in the substance. Instead, therefore, of confining ourselves simply to a reference to the Convention of 1899—for this would not be sufficient—it would be necessary to draw up for naval warfare as for war on land, special, precise, and detailed regulations. These regulations would have the advantage of substituting certainty, based upon definite prescriptions, for the uncertainty of a reference to principles that are more or less vague, and which in their new applications are susceptible of various interpretations.

Should we insert in the regulations respecting the laws and customs of war at sea the different drafts elaborated or still to be elaborated by the committee of examination concerning the crews of enemy merchant ships captured by a belligerent; the draft concerning fishing barks; that concerning the treatment of enemy merchant ships on the outbreak of hostilities; that concerning the destruction of neutral prizes, etc.?

Like the system adopted in 1899, the provisions of these drafts would then serve only as a basis for the instructions that the contracting parties would engage to give to their naval forces.

Will it be preferable, on the contrary, to make these provisions the subject of separate conventions? There would be a certain advantage in combining all in the same regulations, but it might be felt that none of these drafts would concern the *usages* of naval warfare properly so called.

It was thought that this report might be confined to bringing up and defining these questions, as was done in regard to those brought up by the examination of the text itself of the Convention of 1899.

It is for the committee to solve them.

FOURTEENTH MEETING

SEPTEMBER 10, 1907

JOINT SESSION OF THE COMMITTEES OF EXAMINATION OF THE FOURTH COMMISSION AND OF THE SECOND SUBCOMMISSION OF THE THIRD COMMISSION

His Excellency Mr. **Martens** presiding.

On opening the meeting, his Excellency Mr. **Martens** states that at the thirteenth meeting of the committee of examination of the Fourth Commission it was decided, in conjunction with his Excellency Count **Tornielli**, President of the Third Commission, to unite the two committees of examination of the Fourth Commission and of the second subcommission of the Third Commission to consider the question of the destruction of neutral prizes and the right of belligerents to bring prizes into neutral ports.

His Excellency Mr. **Martens** begs his Excellency Count **Tornielli** to take the presidency of the two united committees.

His Excellency Count **Tornielli** declines this proposal, remarking that it is his intention to take an active part in the debate and that he would therefore prefer to remain entirely free. He proposes therefore that the presidency remain in the hands of his Excellency Mr. **Martens**.

His Excellency Mr. **Martens**, having accepted the presidency, states that the committee of examination of the second subcommission of the Third Commission has adopted provisionally¹ the following draft of an article on the right to bring prizes into neutral ports:

ARTICLE 23

The neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court.

If the prize is convoyed by a war-ship, the prize crew may go on board the conveying ship.

If the prize is not under convoy, the prize crew are left at liberty.

[1069] The project establishes the right of neutral States to permit the sequestration of prizes in their ports. The question is whether such a provision would not influence the action to be taken on the right to destroy neutral prizes.

His Excellency Sir **Ernest Satow** desires to remark that the projected Article 23, which has just been read by the **PRESIDENT**, does not represent by any means the result of a general agreement in the committee of examination of the second subcommission of the Third Commission. Reservations were made with regard to this article by the delegations of Germany, of the United States of America, of Great Britain, of Japan, and of Russia. Moreover, the

¹ *Ante*, Third Commission, annex 63.

Italian delegation has announced that its vote on the question of the destruction of prizes would depend upon the acceptance of Article 23 of the project. Under these circumstances, he thinks that the united committees should first of all take definite action on the proposed Article 23.

In explanation of the negative vote that the British delegation will cast on this article, his Excellency Sir ERNEST SATOW presents the following observations:

The article in question makes no mention of the fundamental difference between enemy prizes and neutral prizes.

International law recognizes that the belligerent has the right to sink merchant ships of the enemy, capture having made them the property of the captor State, which consequently may make such disposition of them as it sees fit. If it sinks them, it alone suffers loss, the owner having been dispossessed by the act of capture. Therefore to allow a belligerent to bring an enemy prize into a neutral port would be giving him the privilege of making use of this port for his own advantage.

So far as neutral prizes are concerned, the adoption of Article 23 would imply the abandonment of the principle which we stand for and by virtue of which these prizes should be released.

Article 23 was proposed, if I am not mistaken, by the Italian delegation in the hope that its adoption would facilitate the retirement from their position of those who uphold the right to destroy neutral prizes in certain cases of *force majeure*. Since the two committees of examination are assembled here, there is no irregularity in quoting what was said in the committee of the Fourth Commission. At its meeting of August 28 one of the delegates said "that it is certain that the proposal will have the effect of restricting cases in which destruction will be a necessary measure, but it will not remove them all; there will remain, to be specific, the case of proximity of the enemy and that of a cargo of absolute contraband." Another member said that "the proposal will not be sufficient to do away with the destruction of neutral prizes: (1) because it is not certain that neutral ports will be willing to be places of sequestration; (2) because there are cases in which it is impossible to bring a vessel into a neutral port—for example, if the ship is in such bad condition as to render it impossible to bring it in or if the approach of enemy forces or other reasons threaten its recapture, or if the crew of the war-ship is insufficient to man the vessel adequately."

These two statements, which are not wanting in clearness, show of what little advantage would be the adoption of the article in question. Moreover, there would be danger for the neutral to admit prizes of belligerents to its ports. In fact, a belligerent will not look with indifference upon the internment in a neutral port of prizes taken by the enemy. It is therefore to be feared that

there may follow from such a situation serious complications between [1070] the neutral State and the belligerent State that feels itself aggrieved.

It is true that the originators of the project allow the neutral the right to close his ports to the prizes of belligerents; but it will be very difficult and dangerous for him to exercise this freedom of action and consequently he would do well to refrain from doing so. I find myself therefore constrained to vote against Article 23, even at the risk of losing the Italian delegation's support of our proposal with regard to the destruction of neutral prizes.

The **President** puts to vote Article 23 of the draft Convention concerning the rights and duties of neutral Powers in naval war. He states that the vote does not prejudice the wording of the article.

Voting for Article 23: Germany, Belgium, Brazil, France, Italy, Netherlands, Russia, Serbia, Sweden.

Voting against it: Great Britain, Japan.

Not voting: United States of America, Austria-Hungary, Denmark, Spain, Norway, Turkey.

The **President** proposes that the committee pass to the question of the destruction of neutral prizes. He recalls that the Fourth Commission has before it three proposals relating to this question. The British delegation¹ and the delegation of the United States² have formulated proposals prohibiting such destruction. The amendment to the British proposal submitted by the Japanese delegation³ was afterwards withdrawn. Again, the Russian delegation⁴ has submitted to the Commission a project prohibiting the destruction of neutral prizes except in certain cases of *force majeure*. He opens the discussion on these three proposals.

His Excellency **Baron von Macchio** makes the following statement:

Drawing my inspiration from the spirit that guides the delegation of Austria-Hungary in all questions of maritime law, I commend the principle set forth in the proposal of the British delegation concerning the destruction of prizes, stipulating the absolute prohibition of such destruction.

Nevertheless, in applying this principle to actual cases of so many different kinds that may occur in practice, it seems to me that it would be very difficult not to take cognizance of the different situations in which the various Powers are placed, and not to admit exceptions where it would be absolutely impossible for the commander of a naval force to refrain from such destruction. It is these exceptions that are referred to in the Russian proposal.⁴ At the eighth meeting of the committee of examination Captain **BEHR** set them forth in full and gave examples showing how difficult might be the position in which circumstances might place the commanding officer.

It appeared to me impossible to disregard the force of these arguments, and that is why the delegation of Austria-Hungary will find itself obliged to [1071] declare itself in favor of the principle prohibiting destruction, but also in favor of admitting the exceptions which the Russian project aims to have recognized.

Official note is made of this declaration.

His Excellency **Turkhan Pasha** is in favor of the principle of the prohibition of the destruction of neutral prizes, but he thinks that, if the destruction cannot be absolutely prohibited in certain cases of *force majeure*, it should at least be stipulated that the commanding officer must take every precaution to safeguard the crews as well as the ship's papers.

His Excellency **Sir Ernest Satow** thinks that all the arguments that can be made on the proposals concerning this question seem to have been exhausted

¹ Annex 39.

² Annex 42.

³ Annex 41.

⁴ Annex 40.

in the course of the long discussions which have taken place in the Commission and in the committee. Nothing remains but to vote on these proposals in the order of their presentation to the Commission.

His Excellency Count **Tornielli** has listened to the very precise and very clear statement of the reasons which prevent the British delegation from voting for the provision contained in Article 23 of the draft Convention concerning the rights and duties of neutral Powers in naval war. Sir **ERNEST SATOW** is entirely within his rights and is speaking the truth when he says that this article has not yet been voted by the committee of examination of the second subcommission of the Third Commission.

The article in question has, however, been the subject of an exchange of views in the committee. It has even undergone a somewhat important modification. This modification was made for the purpose of making this provision more acceptable to those who are anxious not to impose any special and unreasonable obligation on neutrals. We have not, however, reached a vote on the provision contained in Article 23, because Sir **ERNEST SATOW** informed us a short time ago that he was awaiting instructions from his Government with regard to the discussion and acceptance of this article. Under these circumstances, says his Excellency Count **TORNIELLI**, it would seem that the provision contained in Article 23 might continue to appear in the project reprinted for the second reading, which we shall have to begin to-day.

I must, he adds, reply briefly to the objections which the very distinguished delegate of Great Britain has raised to-day to the text of Article 23. He has just told us that the rule established by this article applies indiscriminately to belligerent prizes and neutral prizes, while the British proposal relative to the non-destruction of prizes refers to neutral prizes alone. I note that in some cases, especially on account of its cargo, a belligerent prize must be brought before the special tribunal. Furthermore, there having been no discussion as yet on this point, we cannot at present say whether an amendment of Article 23, limiting its application to neutral prizes, would not have had a chance of being adopted. This said, in so far as the preceding debate on the article which is now coming up for discussion is concerned, allow me to remark that when the British delegation filed with the Conference its proposal relative to the absolute prohibition to destroy neutral prizes which could not be brought before a prize court, the delegation of Italy examined it with care and with the greatest sympathy. Two questions, however, immediately occurred to us. From the legal and even from the humanitarian point of view the British proposal presented a most attractive appearance. But circumstances of fact depending upon the geographical situation of the various States likewise forced themselves upon our consideration.

The English proposal, which is substantially the same as the one which was later presented by the United States of America, amounts to saying that a captured neutral ship must be released whenever the captor is not able to bring it into a port of his nationality.

By a provision, respecting which there seems to be general agreement, a belligerent is forbidden to institute a prize court in neutral territory or waters. There are States which would not be prevented by these prohibitions from capturing belligerent or neutral vessels that have made themselves liable to this severe measure. There are other States which, not having colonies scattered

over the face of the earth, would find themselves almost absolutely prevented by these prohibitions from exercising the right of capture.

The Italian delegation, although it has repeatedly heard references to a common maritime law, which dates back more than a century, is conscious of the fact that all has changed in maritime matters within the past few years. Nowadays when the captor sinks an important prize, he does not know who suffers from the blow. We do not at the present time bother with little boats belonging to small ship-owners.

The vessel that we destroy is one of great value, which it frequently happens does not belong to the country under whose flag it sails. The shareholders of the company in which the vessel and the cargo are insured, the merchants of various nationalities to whom the goods on board belong, all these people will suffer serious losses; and in this case it is certain that the destruction of all this wealth which does not affect the enemy directly, perhaps not even indirectly, would seem to be merely an act of vandalism.

But there are nevertheless cases in which the right of capture cannot be disregarded. There is no suspicion as to the motives of Italy. She has voted for respect of private property at sea. She has approved the abolition of contraband of war. She favors, as is known, the most restrictive rules for blockade. The proposal she has submitted to you proves all this. But she does not consider that she can consent to allow herself to be placed in a position of absolute inferiority with regard to the right to take prizes, as long as this right exists and is recognized as belonging to other States.

She has felt that a certain compensation might be established by the rule in Article 23 of the future Convention. I well know that there are competent people who believe that this compensation would be so slight that they consider it illusory and entirely insufficient. But we demanded it and we have joined it to the vote that is asked of us on the British proposal.

In spite of myself, I cannot separate the two questions, and I am forced by the attitude of the British delegation to declare that I shall not vote for the prohibition of the destruction of neutral prizes unless the right to sequester the prize in a neutral port is admitted.

The President desires to say a few words, not in his capacity as a member of the delegation of Russia, but as President. During the debates a number of jurists have been quoted. The decisions of prize courts, especially [1073] those of Lord STOWELL, have been cited. From these citations we may conclude that there is no well-established opinion respecting the destruction of neutral prizes, that such an opinion does not exist in jurisprudence and still less in theory, since we find divergences and inconsistencies in the same writer. It is not within the scope of the Conference to enter upon a discussion of the different systems which have been upheld; it is for the Governments to declare before the outbreak of hostilities what system they intend to follow and what instructions they will give to commanders of their naval forces. However, we must recognize the fact that in this as in all other matters common sense must be our guide; common sense, which GUIZOT called the genius of mankind, does not always govern our actions, and yet it is common sense which should dictate our decision. There are facts which neither Governments nor the International Prize Court, whose birthday is to-day, can disregard. When in land warfare the belligerent sees his enemy hide behind a house or a palace,

he has no scruples about destroying that obstacle, and if that house should happen to contain munitions of war, he destroys it without having to pay an indemnity. In naval warfare it is recognized that destruction must not take place without a judgment by the prize court, and this judgment constitutes great progress over the laws and customs of war on land.

The proposal respecting the destruction of prizes, which the Japanese delegation filed and subsequently withdrew,¹ obliged the commander to release the prizes which he was not able to bring before a prize court, unless the vessel had forcibly resisted search and capture or was in the service of the naval forces of the enemy. It would seem as if this proposal was in harmony with common sense. What will the belligerent State do at the present time, if the commander of one of its squadrons sinks a neutral prize under such circumstances? It will confer all kinds of honors upon him, for it will consider that this commander had in mind the vital interests of his country and that his action was in accord with his orders. Now that the International Prize Court is established, it will hear cases submitted to it by neutrals whose vessels may have been captured and sunk. It must, according to its constitutive act, apply the conventions in force and, in the absence of conventions, it will have recourse to general principles or the rules of justice and humanity. In the matter of the destruction of neutral prizes general principles are lacking, and the minutes of the Conference will prove that it has taken no action on the question. The judges of the Prize Court will therefore find no legal basis for their decisions, and they will be in a very difficult situation, of which it would be well for the Conference to take note.

His Excellency Count **Tornielli** speaks as follows:

I desire to explain the vote that we are called upon to cast on the British proposal. I must first of all state that Article 23 of the draft Convention concerning the rights and duties of neutrals in case of naval warfare has been approved by ten votes to two, with six abstentions. The committee of examination of the Third Commission will have to decide whether the rather small majority in favor of the rule contained in this article is sufficient to retain this provision in the draft. For the time being the vote is in favor of Article 23. I have therefore the right to consider the article as being in existence. It is on condition of the existence of this article therefore that I shall vote for the British proposal. The vote of the committees being merely of a provisional character, it is understood that the vote of the Italian delegation would [1074] be in the negative if Article 23 were to be stricken out of the codification of maritime law in time of war.

The **President** proposes that the committee vote first on the British and American proposal and then on the Russian proposal.

These proposals are as follows:

British proposal²

Destruction of a neutral prize by the captor is prohibited. The captor must release all neutral vessels that he is unable to bring before a prize court.

¹ Annex 41.

² Annex 39.

*Proposal of the United States of America*¹

If for any reason whatever a captured neutral vessel cannot be brought to adjudication, such vessel must be released.

*Russian proposal*²

Believing that the absolute prohibition of the destruction of neutral prizes by belligerents would bring about a situation of striking inferiority in the case of Powers that have no naval bases except on their own coasts, and being of the opinion that all international agreements should be founded upon the principle of reciprocity and equal opportunity;

The Imperial delegation of Russia submits to the consideration of the Fourth Commission the following draft of a provision relating to the destruction of prizes, a provision which seems to it to take into account all the interests at stake:

The destruction of a neutral prize is prohibited except in cases where its preservation might endanger the safety of the capturing vessel or the success of its operations. The commanding officer of the capturing vessel may exercise the right of destruction only with the greatest discretion, and must take care to tranship beforehand the crew, and, in so far as possible, the cargo, and in all cases preserve all the ship's papers and all other articles that are necessary for a prize decision and for the fixing of the indemnities to be granted to neutrals, if occasion requires.

It is thoroughly understood that in case the seizure or destruction of neutral prizes is recognized as illegal by a prize court or by the competent authorities, the interested parties have a right to bring action for damages.

His Excellency Baron **von Macchio** asks whether in voting for the British proposal he shall merely confirm a principle subject to exceptions, or whether he shall declare himself on a matter of fact.

The **President** replies that the British proposal does not admit of any exceptions in its application.

His Excellency Mr. **Hammarskjöld** states that in his opinion the vote that has just been cast must stand and that its practical force should not, it would seem, be passed upon by the united committees. This being so, he does not hesitate to vote for the British proposal, considering Article 23 as adopted, which gives neutral States the right to receive in their ports prizes that are brought in by belligerents.

His Excellency Sir **Ernest Satow** remarks that the preservation of Article

23 does not prevent voting for the right to destroy neutral prizes; this [1075] article does not guarantee neutrals against all cases if destruction may appear necessary to the belligerent. Two delegations have announced that even with this article they would be unable to renounce the right to sink neutral prizes. From the point of view of destruction therefore Article 23 is of very little value, as it will not diminish the cases in which destruction will be deemed necessary.

The committee proceeds to vote on the British and American proposals.

Yeas: United States of America, Belgium, Denmark, Spain, Great Britain, Italy, Japan, Norway, Netherlands, Sweden, and Turkey.

¹ Annex 42.

² Annex 40.

Nays: Germany, Austria-Hungary, France, and Russia.

Not voting: Brazil and Serbia.

The President proposes that the committee vote upon the Russian proposal.

His Excellency Count Tornielli states that he voted for the British proposal with the reservation that Article 23 be preserved. He is in this respect in perfect accord with his Excellency Mr. HAMMARSKJÖLD, who has stated the question of the preservation of this article very well. The Russian proposal does not admit that the prize may be destroyed, but it establishes exceptions which are inspired by a humanitarian sentiment and which are therefore worthy of consideration; but his Excellency Count Tornielli, having declared himself in favor of absolute prohibition, with the reservation that Article 23 be preserved, cannot vote for the Russian proposal¹ and will therefore abstain from voting.

The committee proceeds to vote.

Yeas: Germany, Austria-Hungary, France, Russia, Serbia, and Turkey.

Nays: United States of America, Belgium, Great Britain, and Japan.

Not voting: Brazil, Denmark, Spain, Italy, Norway, Netherlands, and Sweden.

The President, after having noted that the vote on the Russian proposal has resulted in 6 yeas, 4 nays, and 7 not voting, states that the report will mention these various figures and will refer the matter to the Conference.

¹ Annex 40.

[1076]

FIFTEENTH MEETING

SEPTEMBER 13, 1907

His Excellency Mr. **Martens** presiding.

The minutes of the eleventh meeting are adopted.

With regard to the minutes of the twelfth meeting, Mr. **Kriege** remarks that in proposing at that meeting the omission of Article 5 of the project respecting days of grace, he did not refer merely to the revised version of that article but to the original article as well. The minutes do not seem to be sufficiently explicit on this point. Mr. **KRIEGE** therefore requests the committee to make the necessary correction.

The committee decides to do so. With the reservation of this correction, the minutes of the twelfth meeting are adopted.

The minutes of the thirteenth meeting likewise are adopted.

The **President** states that the order of business calls for consideration of Mr. **FROMAGEOT**'s report on days of grace.

Mr. **Fromageot** (reporter) reads his report.¹

With regard to the explanatory statement following Article 3 of the project concerning the status of enemy merchant ships on the outbreak of hostilities,² Mr. **Kriege** expresses the desire that it mention the observation of the German delegation concerning the inequality which would result among the Powers from the adoption of the aforesaid Article 3.

The **Reporter** states that he is ready to make the desired modification.

He continues the reading of his report and remarks with regard to Article 4 that the text has been slightly changed. Instead of reading, "Enemy cargo on board the vessels referred to in the preceding articles," the article has been made to read as follows: "Enemy cargo on board the vessels referred to in Articles 1 and 2, as well as in Article 3." This modification would permit the delegations that might wish to make reservations with respect to Article 3 to accept Article 4, while not binding themselves with regard to the goods on board the vessels referred to in Article 3.

[1077] His Excellency Mr. **Hammar skjöld** thinks that in view of these considerations it would perhaps be desirable to divide Article 4 into two paragraphs, the first of which should relate to the vessels referred to in Articles 1 and 2, and the second to those referred to in Article 3.

The **Reporter** thinks that his Excellency Mr. **HAMMARSKJÖLD**'s proposal would have the drawback of crowding the text and that a reservation concerning Article 3 would logically entail a reservation regarding the goods on board the vessels referred to in that article.

¹ Annex A to these minutes; see also report to the Conference, vol. i, p. 244 [250].

² Annex 25.

Mr. **Kriege** prefers that Article 4 be divided into two parts, as proposed by the first delegate of Sweden. His delegation, whose intention it is to make a reservation with regard to Article 3, would then be able to make a reservation with respect to the second paragraph of Article 4.

Mr. **Louis Renault** concurs in his Excellency Mr. **HAMMARSKJÖLD**'s view, remarking that a reservation with regard to Article 4 would not in itself involve a reservation regarding the words "as well as in Article 3" inserted in Article 4. In his opinion, it is difficult to make a reservation regarding the *words* of an article. He therefore prefers the following phraseology for Article 4:

Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship itself.

The same rule applies in the case of cargo on board the vessels referred to in Article 3.

On the proposal of the **President**, the committee accepts this wording, which will take the place of the original text in the report to the Commission.

The **Reporter** having finished the reading of the report, his Excellency Mr. **HAMMARSKJÖLD** recalls that divergent constructions were put upon Article 5 of the project in the committee. Messrs. **RENAULT**, **KRIEGE** and the **Speaker** thought that the designation of a vessel for conversion is always the result of a specific act on the part of the Government; other delegates, on the contrary, were of the opinion that this designation could follow from the simple fact of the build of the vessel. In order to reconcile these conflicting points of view, he proposes that the article in question be made to read as follows:

The present regulations do not affect merchant ships whose build shows that they are intended for conversion into war-ships.

His Excellency Lord **Reay** and his Excellency **Keiroku Tsudzuki** favor this amendment.

Captain **Behr** states that he desires to reserve his vote until the plenary meeting of the Commission.

The committee accepts the amendment of his Excellency Mr. **HAMMARSKJÖLD**.

The **Reporter** remarks that certain modifications must therefore be made in the latter part of his report.

His Excellency General **Porter** states that the delegation of the United States of America desires to make certain reservations with regard to several of the articles of the project adopted by the committee.

[1078] Jonkheer **van Karnebeek** thinks that the mention of the vote on the project as a whole does not give a correct idea of the situation. Why did the Netherlands abstain from voting? Not because it is not in favor of the project as a whole. If they abstained, it was because of the preceding vote which resulted in the complete suppression of Article 5 adopted by a substantial majority. The result of this suppression was to render inapplicable to the vessels in question the common law, which admits of confiscation. And since confiscation together with the right of detention contemplated by Article 2 does not seem to be justified in the exceptional circumstances referred to by the regula-

tions, the Netherlands did not wish to contribute to compromising the result which had been attained, and that is the reason why it refrained from voting. As the vote might be understood in a different sense, Jonkheer VAN KARNEBEEK asks that there be a reference in parenthesis after the word "Netherlands" to the minutes of the present meeting.

With regard to this remark, Mr. Louis Renault observes that it would be desirable to proceed to a vote on the whole project concerning days of grace.

Concurring in this proposal, the President puts to vote the project as a whole, with the modifications that have just been adopted by the committee.

Yeas: Germany,¹ Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Serbia, Sweden.

Not voting: United States of America, Russia.

The President proposes that the committee pass to the reading of the report on the conversion of merchant ships into war-ships.²

Mr. Fromageot (reporter) reads the report.

Mr. Kriege says that the passage in the report reading "As to the conditions for the exercise of this right, without questioning the *impossibility of using neutral waters* to effect conversion, the question as to whether, etc.," does not seem to him to be quite correct. There has been no vote on the question whether conversion is lawful in neutral ports. Certain observations have been presented on the subject by Mr. LAMMASCH and the PRESIDENT, but the German delegation has not declared itself on this point and no action has been taken.

The Reporter continues the reading of the report and calls the committee's attention to the preamble of the Convention suggested by the British delegation.

Mr. Kriege prefers the following phraseology for the third paragraph of the preamble:

Whereas the high contracting Parties have been unable to come to an agreement on the question whether the conversion of a merchant ship into a war-ship may take place outside of its own ports. . . .

[1079] His Excellency Lord Reay is not in favor of this proposal. In his opinion, the question of the right to convert vessels in neutral ports will probably be decided in the negative by the Third Commission, since the draft Convention which that Commission is discussing contains the principle that neutrals must not permit belligerents to increase their military power in their waters.

Mr. Louis Renault and his Excellency Count Tornielli observe that in their opinion this question is not decided by the Third Commission.

Mr. Kriege adds that neither is it settled by the Fourth Commission.

The President says that the modification proposed by Mr. KRIEGE does not change the sense of paragraph 3 of the preamble, since it clearly indicates that the question of the place of conversion is not considered in the provisions of the project.

Mr. de Beaufort remarks that it would be more correct to say "territorial waters" instead of "ports."

His Excellency Mr. Hammarskjöld prefers a more general wording, which would not prejudge the question of the place of conversion. It might be as

¹ With the reservation of Article 3 and of the second paragraph of Article 4.

² See report to the committee of examination, fifteenth meeting, annex B; see also report to the Conference, vol. i, p. 234 [239].

follows: "Whereas the high contracting Powers have been unable to come to an agreement on the question of the place where conversion may be effected."

His Excellency Lord **Reay** remarks that according to the report the question of conversion on the high seas was discussed by the Commission and by the committee. The President has noted in the course of the debates that there have been no differences of opinion on the question of conversion in neutral waters. The preamble as drawn up by the British delegation confines itself to stating that fact. That is why Lord **REAY** holds to the wording which he has proposed.

The **Reporter** replies to his Excellency Lord **REAY**'s remark by pointing out that his Excellency Mr. **HAMMARSKJÖLD**'s formula likewise is in conformity with the report.

His Excellency Lord **Reay** states that, if the question of the conversion of vessels in neutral ports were to be prejudged, even indirectly, he would prefer to request a vote on that question, being sure that the majority would be in favor of prohibiting such conversion.

The **President** thinks that there is no occasion to settle that question. The wording proposed by the first delegate of Sweden simply states that it has been impossible to reach an agreement on the place of conversion.

Mr. **Guido Fusinato** thinks that the wording proposed by Mr. **Kriege** is more in keeping with actual conditions. There has been no agreement except with regard to conversion in national ports. Conversion in neutral ports has not been discussed, and conversion on the high seas has given rise to divergences of opinion. It is therefore correct to say that the high contracting Parties have been unable to come to an agreement on conversion outside of *their own ports*.

The **Reporter** recalls the exchange of views on this question that took place at the fifth meeting of the Fourth Commission. He reads the following extracts:

Mr. **LOUIS RENAULT** remarks that the question of the place where the conversion of a merchant ship into a war-ship may be effected admits of three solutions. According to one view conversion may be effected any-
[1080] where, even in a neutral port; no one seems to have taken this position in so many words. He shares the opinion of his Excellency Lord **REAY** on this point and believes that such a conversion would be contrary to neutrality. It would leave the way open to fraudulent practices, which it is easy to imagine. On the other hand, he does not see in what way the principles of international law could be urged against conversion on the high seas.

And further on:

The **PRESIDENT** sums up the opinions that have been set forth. He shows that the British delegation's objections to conversion on the high seas disappear as a result of the publicity proposed to be given to this operation. Again, the Commission appears to be unanimous in considering that conversion carried out in neutral ports or waters would be a violation of the rights and duties of neutrals. Under these circumstances the President proposes that the discussion be closed and that the various proposals be referred to the committee of examination.

Mr. **Kriege** replies that it follows from the passages which have just been read that no action has been taken on the question of conversion of vessels in neutral ports.

He therefore concurs in his Excellency Mr. HAMMARSKJÖLD's formula.

His Excellency Lord Reay states that he cannot accept the formula of the first delegate of Sweden, as it seems to him to call in question the prohibition of conversion of vessels in neutral ports. He is entirely of the PRESIDENT's opinion and considers that conversion effected in a neutral port or in neutral waters would be "a violation of the rights and duties of neutrals."

Mr. Heinrich Lammæsch points out that the proposal of his Excellency Mr. HAMMARSKJÖLD has the drawback of excluding the idea that an agreement was possible with regard to the prohibition of conversion in neutral waters. This drawback might be avoided if the third paragraph were worded as follows:

Whereas the high contracting Parties have not wished to decide the question whether conversion of a merchant ship into a war-ship may take place on the high seas, it is agreed, etc.

His Excellency Mr. Hammarskjöld states that he supports the British proposal. The formula which he proposed clearly stated that the committee had been unable to come to an agreement on the question of the place of conversion. It did not refer to this or that specific place, for if one place is mentioned, the others must be mentioned also, especially neutral ports.

The Reporter proposes the following phraseology: "has been unable to formulate an agreement on the question of the place where conversion may be effected."

His Excellency Lord Reay is not in favor of this wording, which seems to imply that there was a divergence of views in the committee in the matter of conversion in neutral ports. To put an end to all indecision in this respect, all that would be necessary would be to return to the proposal already made by Jonkheer VAN KARNEBEEK to vote on the prohibition of conversion in neutral ports.

The President remarks that there has never been any discussion or action taken on this subject. Under these circumstances, it is the old law that remains in effect.

[1081] His Excellency Count Tornielli thinks that the whole question is as follows. The British delegation asks that the fact be stated that the Commission has been unable to reach an agreement on the question whether conversion might be effected on the high seas. This means that there has been no question of territorial or neutral waters. There is therefore no objection on the one hand to asserting that the committee is not in agreement on the possibility of conversion on the high seas, and on the other hand to voting on the question of conversion in territorial or neutral waters.

The President thinks that the committee has not sufficient time left to discuss the place of conversion and that it has advanced the question considerably by voting the articles which are submitted to its approval.

His Excellency Count Tornielli for his part thinks that it is hardly possible to say that the committee is in agreement on the question of conversion in neutral or territorial waters, since that question has never been the subject of discussion or of a vote. All that can be stated is that there has been no agreement on the question of conversion on the high seas.

His Excellency Mr. Keiroku Tsudzuki concurs in his Excellency Count TORNIELLI's observations, but it is not said that for this reason it must be admitted that the divergence of opinion covered all the places where conversion

might be effected. It was only respecting the specific question of conversion on the high seas that the divergence of views was so apparent. That is why he thinks that he might accept the formula proposed by Great Britain, which mentions only what actually was discussed, namely, conversion on the high seas.

His Excellency Lord **Reay** says that the committee did not discuss the question of conversion in neutral ports, because no objections were raised to the opinion expressed by the President of the Commission at the fifth meeting that the committee was unanimous in considering such conversion a violation of the rights and duties of neutrals.

The **President** inquires whether it is the intention of the British delegation to have it stated that there was no difference of opinion except in the matter of conversion on the high seas.

His Excellency Mr. **Hammarskjöld** proposes by way of compromise the following new wording:

Whereas the high contracting Parties have been unable to come to an agreement on the question whether the conversion of a merchant ship into a war-ship may take place upon the high seas, it is understood that the question of the place where such conversion is effected remains outside the scope of this agreement and is in no way affected by the statement of the following rules.

The object of this formula is to state that when the committee was unable to come to an agreement upon conversion on the high seas, it did not think that it ought to discuss other places of conversion, so as not to prejudge in any way the action to be taken on conversion on the high seas.

His Excellency Count **Tornielli** concurs in the proposal of his Excellency Mr. **HAMMARSKJÖLD** which correctly states the facts. It is manifestly because the committee has been unable to reach an agreement on conversion on the high seas that it did not endeavor to come to an agreement on the other places of conversion.

[1082] His Excellency Lord **Reay** states that he accepts the formula proposed by his Excellency Mr. **HAMMARSKJÖLD**.

The **Reporter** continues his report and reads the first three articles of the draft Convention, as well as the clause which the British delegation proposes be added to Article 3.

The committee adopts this clause.

The **REPORTER** concludes the reading of his report.

His Excellency Mr. **Hammarskjöld** states that the last paragraph relating to the permanence of the conversion is in conformity with the actual state of affairs, but if it is compared with the paragraph on page 1080 [1094],¹ it may give rise to a certain confusion. It is stated on that page that considerable differences of opinion came to light on the question of the permanence of the conversion, but it was not so much the divergent views on the permanence of the conversion as its relationship to the place of conversion which was the real cause of the action taken by the committee on this point. It would therefore be preferable to attenuate somewhat the statement on the page in question and to bring out the relationship between the question of permanence and that of place.

His Excellency Mr. **Keiroku Tsudzuki** says that it must nevertheless be admitted that there were divergent views on the permanence of the conversion.

The **President** states that these various observations will be mentioned in

¹ See Mr. **FROMAGEOT**'s report.

the final proof of the report. He proposes that the committee vote on the complete draft Convention relating to the conversion of merchant ships into war-ships, including the preamble proposed by the British delegation and amended by his Excellency the first delegate of Sweden, as well as on the amendment proposed by the same delegation with regard to Article 3.

His Excellency General Porter observes that allusion is made to the abolition of privateering.¹ This sentence is a little too sweeping in character. The Government of the United States of America has not yet adhered to the Declaration of Paris of 1856. It prefers to take the same stand as on the question of the inviolability of private property at sea.

The Reporter will modify the passage in accordance with his Excellency General PORTER's observation.

The committee proceeds to vote.

Voting for the Convention as a whole: Germany, Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Russia, Serbia, and Sweden.

Not voting: United States of America.

The President proposes that the committee repeat its thanks to Mr. FROMAGEOT. (*Loud applause.*)

[1083] Jonkheer van Karnebeek (reporter) reads his report² to the Fourth Commission on the laws and customs of war at sea.

The committee adopts this report without comment.

The President feels he is interpreting the sentiments of the committee in thanking Jonkheer VAN KARNEBEEK for his report. (*Loud applause.*)

The PRESIDENT informs the committee that it must now await the action of the subcommittee in the matter of contraband of war, and that he proposes to call immediately a plenary meeting of the Fourth Commission.

[1084]

Annex A

DAYS OF GRACE

REPORT TO THE COMMITTEE OF EXAMINATION³

The third question in the program of the Fourth Commission relates to the "*days of grace to be granted to vessels in which to leave neutral ports or enemy ports after the outbreak of hostilities.*"⁴

As is known, it has been the custom of belligerent States, since the Crimean War of 1854, to permit enemy ships in or entering their ports to leave on the outbreak of hostilities, and even to grant them certain days of grace in which to depart in safety instead of confiscating them.

The reason for this measure, which is at present entirely optional, is to

¹ See *post*, p. 1077 [1091], paragraph 6.

² See report to the committee of examination annexed to the minutes of the third meeting of the committee of examination; see also report to the Conference, vol. i, p. 259 [264].

³ Reporter: Mr. FROMAGEOT. See also the report to the Conference, vol. i, p. 244 [250].

⁴ See vol. i, *in initio*. Russian program of April 3, 1906, number 3, paragraph 4.

"conciliate the interests of commerce with the necessities of war," and, even after the outbreak of hostilities, "still to protect, as widely as possible, transactions entered into in good faith and in course of execution before the war."¹

This question was submitted to the Commission for consideration by our president, Mr. MARTENS, in the following form:²

Is it good practice in war to seize and confiscate, upon the outbreak of hostilities, enemy merchant ships stationed in the ports of one of the belligerent States?

Should not these ships be granted the right to depart freely within a fixed time, with or without cargo, from the ports where they happen to be at the beginning of the war?

Four propositions were presented on this subject.

The delegation of Russia³ proposed that the granting of days of grace to merchant ships belonging to one of the belligerent Powers and overtaken by war in enemy ports be declared compulsory henceforth, so that they might be able to complete their innocent transactions, to put out to sea without interference, and to reach the nearest *national port or a neutral port*. A vessel which, on account of *force majeure*, might not be able to take advantage of this permission, could not be confiscated. The Russian proposition added, for a

similar reason, that a vessel which had left its last port of departure [1085] before the war and was at sea when war broke out, could not be captured; that it could only be detained; and, finally, that the benefit of these provisions should be extended likewise to vessels entering enemy ports.

In support of this proposition, the Imperial delegation emphasized,⁴ on the one hand, the necessity of safeguarding, in conformity with equity, commercial transactions entered into in good faith and in all confidence before the war, and, on the other hand, the practice universally followed since 1854.

However equitable the principle of this measure may appear in itself, attention was nevertheless called to the fact⁵ that it was a most delicate matter in practice to lay down a uniformly obligatory rule, and that the sanctioning of such an obligation might eventually work harm to the legitimate interests of belligerents.

Enemy ships, which happen to be in the ports of a belligerent, may, as was said,⁶ be vessels subject to service in war. It is difficult, perhaps impossible, always to distinguish them beforehand. Can the belligerent, therefore, be forced in all cases to allow enemy merchant ships, whatever may be their character, to leave his ports, since the right to detain them enables him to deprive his enemy of means of attack and defense which might soon be utilized?

For these reasons the French delegation⁷ proposed the continuance of the

¹ Report preceding the French decree of March 27, 1854 (Pistoye and Duverdy, *Traité des prises maritimes*, Paris, 1855, vol. ii, p. 467).

² *Post*, Fourth Commission, annex 1, *Questionnaire*, questions IV and V.

³ *Ibid.*, annex 18.

⁴ Speech of Colonel OVTCHINNIKOW, minutes of the fifth meeting of the Fourth Commission, July 12, 1907.

⁵ Speech of Captain OTTLEY (see *ante*, fifth meeting of the Fourth Commission, July 12, 1907); of his Excellency Mr. KEIROKU TSUDZUKI (*ibid.*); of Mr. LOUIS RENAULT (eighth meeting, July 24, 1907).

⁶ Speech of Mr. LOUIS RENAULT (eighth meeting, July 24, 1907; tenth meeting, July 31, 1907).

⁷ *Post*, Fourth Commission, annex 20.

present optional course. But, fully endorsing the sentiments of equity expressed by Russia and its legitimate concern for the interests of international commerce, which demand that transactions confidently entered into in time of peace should not be cheated of success, the delegation of the Republic admitted the principle that a vessel, which should be refused permission to depart, could not be confiscated, and that it could only be liable to requisition in consideration of an indemnity, like all other property which happens to be in the territory of a belligerent.

The Netherland delegation,¹ while declaring itself in favor of a compulsory rule, proposed an amendment making an exception in the case of vessels admitting of conversion into war-ships.

Finally, the Swedish delegation,² with a view to conciliation, proposed a combination of the Russian and French propositions by limiting the project to an expression of the desirability of granting days of grace.

Thus the discussion which took place in Commission bore principally upon the compulsory or optional character of the measure in question.

After having ascertained³ that there was unanimous agreement that the granting of days of grace be at least considered desirable, the Commission decided⁴ not to vote until after the committee of examination had completed its work; and it was of the opinion that for the purpose of facilitating an agreement it was wise to charge this committee with the drafting of a project, [1086] which should take into consideration the difficulties concerning merchant ships admitting of conversion into war-ships.⁵

Such were the circumstances under which the committee of examination entered upon its deliberations.⁶

Since it had been impossible to come to an agreement upon the principle of obligation,⁷ the committee took as the basis of discussion the Swedish compromise proposition. This resulted in the following draft regulations.⁸ Except for certain reservations, it received a unanimous vote, with two abstentions⁹ in Commission.

¹ *Post*, Fourth Commission, annex 19.

² *Ibid.*, annex 21; and observations of his Excellency Mr. HAMMARSKJÖLD (tenth meeting, July 31, 1907).

³ See observation of General ROBILANT (fifth meeting, July 12, 1907); of his Excellency Mr. MARTENS, *president* (*ibid.* and tenth meeting, July 31, 1907); of Mr. DE BEAUFORT (eighth meeting, July 24, 1907); of his Excellency Mr. HAMMARSKJÖLD (tenth meeting, July 31, 1907).

⁴ Minutes, tenth meeting, July 31, 1907.

⁵ See observations of Mr. KRIEGE, tenth meeting, July 31, 1907.

⁶ See *ante*, Fourth Commission, minutes of the committee of examination, second meeting, August 9, 1907; third meeting, August 12, 1907; fourth meeting, August 14, 1907.

⁷ Committee of examination, minutes, second meeting, August 9, 1907. The principle of an obligation, when put to vote, resulted as follows: eight States voted *for* it (Germany, United States, Austria-Hungary, Belgium, Norway, Netherlands, Russia, Serbia); four States voted *against* it (Argentine Republic, France, Great Britain, Japan); Sweden *abstained*.

⁸ Adopted in committee of examination of Fourth Commission (*ante*) by thirteen votes and two abstentions. Voting for the project as a whole: Germany (with reservation of Articles 3 and 4, paragraph 2), Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Serbia, Sweden; *abstaining*: Russia, United States of America. See fifteenth meeting of committee, September 13, 1907.

⁹ Thirteenth meeting of Fourth Commission, September 18, 1907. Thirty-nine States took part in the vote; three States (Germany, Montenegro, and Russia) voted with the reservation of Articles 3 and 4, paragraph 2; *abstaining*: United States of America, Ecuador and Haiti.

TITLE

In the first place the title indicates that the draft regulations concern "the status of enemy merchant ships at the outbreak of hostilities." The expression "days of grace" was abandoned, because it did not seem to come sufficiently within the various hypotheses considered in the following provisions:

ARTICLE 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

Article 1 contemplates, in its *first paragraph*, merchant ships belonging to one of the belligerent Powers, which happen to be *in* an enemy port at the outbreak of hostilities.

In default of an agreement upon the practical possibility of promulgating an obligation at this time, the text indicates that it is desirable that the belligerent, in whose port such vessels happen to be, grant them free departure, either immediately or within a certain time, and supply them thereupon with a pass permitting them to proceed in safety to their port of destination or to such other port of refuge as it may be necessary to designate; for example, if their port of destination is a blockaded enemy port. The provision thus [1087] expresses the unanimous opinion of the Commission, while leaving in force the present optional course, which permits a belligerent State, if there be occasion, to refuse to allow the vessels in question to depart.

It appeared to be preferable not to specify that the days of grace would be granted for loading or unloading, so far as not to limit the benefit solely to these commercial operations.

The *second paragraph* contemplates the case of an *incoming* vessel, which has left its last port of departure before the war began and is in ignorance of the outbreak of hostilities upon its arrival in the enemy port. The second condition seems to be necessary in order to avoid abuses; for the vessel, although it had put to sea before the war began, may have learned during its voyage of the existence of hostilities, especially if it has been met and searched by a belligerent cruiser. The mention of such search in its ship's journal will establish the fact in this respect.

ARTICLE 2

A merchant ship unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated in the above article, or which was not allowed to leave, or was not granted days of grace in which to leave, cannot be confiscated. It is only liable to detention without payment of compensation, but subject to the obligation to restore it after the war or requisition it on payment of compensation.

Article 2 contemplates the case of an enemy merchant ship that has been unable to depart, either because it has not been allowed to leave, or because it

has been prevented by *force majeure* from taking advantage of its permission to leave.

In the present state of the law it is liable to confiscation and subject to the common right of capture.

As has already been explained, this appeared to be somewhat at variance with equity, good faith, and the security necessary in international trade. It could not be admitted, in the present state of modern commerce, that every time there was more or less political tension between States, ship-owners, underwriters, shippers, and all who are interested in maritime commerce should be confronted by fear that their enterprises, confidently entered upon during peaceful relations, might come to grief through unexpected and brutal confiscation.

But it was likewise seen that the belligerent might have a legitimate interest in not allowing such and such an enemy ship to leave his ports, since such ship might perhaps, sooner or later, serve against it, either as an auxiliary cruiser, blockading its ports or exercising the right of search and of capture, or as a repair ship, transport, or collier, or simply as a wreck to be sunk for the purpose of blockading the belligerent's passage.

Therefore, although it is not possible in practice to impose such an obligation upon a belligerent State, it is at least indispensable that a belligerent should not, in addition to the option given him to refuse to allow a ship to depart, claim the right to make innocent commerce bear the burden of a loss which could not be foreseen.

Therefore the belligerent is forbidden to confiscate; but, on the other hand, is given the right to detain on condition of restitution after the war, and to requisition on condition of paying an indemnity. This is the solution which it appeared to be equitable to propose.

At the very beginning certain doubts had been expressed as to the extent of the indemnity, but it is easy to see, in this respect, that, like all indemnities, this one should cover the loss suffered by the lawful claimant from the act which caused it, that is to say, in this case, the requisition.

[1088] Finally, on account of the diversity, inadequacy or absence of legal provisions respecting requisition in different countries, it appeared to be preferable¹ not to refer to municipal laws matters in relation to the right of requisition and the obligation to indemnity.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be confiscated. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such case provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After touching at a port in their own country or at a neutral port, these ships are subject to the laws and customs of maritime war

Article 3 relates to the hypothesis of enemy merchant ships which have left their last port of departure before the beginning of the war and are encountered *at sea*, sailing in full confidence and entire ignorance of the outbreak of hostilities.

¹ See vol. iii, Fourth Commission, minutes of the committee of examination, second meeting, August 9, 1907.

In the present state of the law, these ships are, in principle, liable to capture.

However, it may be said that the same reasons that led to the preceding provisions relative to vessels *entering* enemy ports or vessels which happen to be *in* such ports, seem to demand that capture be forbidden. In both cases, the equitable solution and the interest of commerce are the same; and the interest of the belligerent is analogous.

The opinion of the committee, however, was not unanimous upon this point.

The proposed text prohibited capture, and left the belligerent merely the right of detention or seizure.

Attention was called to the fact that,¹ with respect to certain countries, the right of capture was indispensable; that it allowed the destruction of the captured vessel, so as not to encumber the captor with a prize which it might be difficult or impossible to convoy to a national port; that the refusal of this right to destroy would, in effect, amount to forcing a belligerent to leave the encountered vessel free; that the right to seize was of little value, if it was impossible in practice to convoy the prize to a national port; and that the rule proposed would thus create an inequality among the States.

When the question was put to vote, it resulted in a tie—6 votes to 6, with 3 abstentions.²

The committee then took as the basis of its deliberations an intermediate proposition, presented by his Excellency the delegate of Italy, which tended to assure equality of treatment of vessels encountered at sea and those in port; that is to say: confiscation to be prohibited; the right of seizure and requisition to be extended so as to include the right to destroy, but with the reservation of requiring an indemnity.

This solution reduced the question to one of money, by permitting a belligerent to obtain the result assured by the present practice, but obliging him to pay for the loss caused by him to the commercial venture thus taken by surprise and unexpectedly sacrificed.

[1089] This proposition, on the first reading, succeeded in obtaining a majority of 8 votes to 4, with one abstention;³ and, on the second reading, a majority of 10 votes to 4, with one abstention.⁴

It goes without saying that the right to destroy depends, as was pointed out by the delegation of Austria-Hungary⁵ and as the text indicates, upon the obligation to provide for the safety of the passengers and crew, and the preservation of the ship's papers.

Finally, when the vessels in question have reached a port of their own country or a neutral port, there is no further reason for their favored treatment, and they are naturally subject to the common law of naval warfare.

¹ Declarations of Mr. KRIEGE, *ante*, Fourth Commission, fourth meeting of the committee of examination, August 14, 1907; twelfth meeting of committee of examination, September 6, 1907; thirteenth meeting of the Commission, September 18, 1907.

² Minutes, committee of examination, third meeting, August 12, 1907.

³ Minutes, committee of examination, fourth meeting, August 14, 1907. Voting *for*: Austria-Hungary, Brazil, France, Italy, Netherlands, Russia, Serbia, Sweden; voting *against*: Germany, United States, Argentine Republic, Japan; *abstaining*: Great Britain.

⁴ Minutes, committee of examination, twelfth meeting, September 6, 1907. Voting *for*: Austria-Hungary, Belgium, France, Great Britain, Italy, Norway, Netherlands, Portugal, Serbia, Sweden; voting *against*: Germany, Argentine Republic, Japan, Russia; *abstaining*: United States of America.

⁵ Remark of his Excellency Baron VON MACCHIO, see *ante*, Fourth Commission, fourth meeting of the committee of examination, August 14, 1907.

ARTICLE 4

Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship itself.

The same rule applies in the case of cargo on board the vessels referred to in Article 3.

Articles 1, 2, and 3 concern the vessels; Article 4 treats of the cargo.¹

With the reservation that the provisions of the Declaration of Paris of 1856 shall be applied, if occasion demands, enemy cargo is put on the same footing as an enemy ship, and is to receive the same treatment.

ARTICLE 5

The present regulations do not affect merchant ships whose build shows that they are intended for conversion into war-ships.

The object of Article 5 is to limit the scope of the application of the regulations.²

However optional the granting of days of grace contemplated by Article 1 may be, and however equitable the solutions sanctioned by Articles 2, 3, and 4 may appear, the majority of the committee,³ after some little hesitation, [1090] came to the conclusion, upon the proposal of the British delegation,⁴ amended by the delegation of Sweden,⁵ that merchant ships intended for conversion into war-ships should be expressly left out of the proposed provisions and kept under the jurisdiction of the present law. That is the object of Article 5, according to which the build of the ships in question should serve to indicate their ultimate purpose.

Such are the motives of the draft regulations hereinafter, which your committee has prepared in execution of your order, and which it has the honor⁶ to submit to the Commission.

Annex B

CONVERSION OF MERCHANT SHIPS INTO WAR-SHIPS

REPORT TO THE COMMITTEE OF EXAMINATION⁷

The first question contained in the program of the Fourth Commission is "*Conversion of merchant ships into war-ships.*"⁸

¹ Minutes of the committee, fourth meeting, August 14, 1907.

² *Ibid.*

³ See remarks of Mr. KRIEGE, twelfth meeting of the committee, September 6, 1907, as well as the successive votes, both on the subject-matter and form of this provision, in the fourth meeting (August 14, 1907), twelfth meeting (September 6, 1907), and fifteenth meeting (September 13, 1907).

⁴ See fourth meeting of the committee, August 14, 1907, and annexes 24 and 26.

⁵ See fifteenth meeting of the committee, September 13, 1907.

⁶ By thirteen votes and two abstentions. Voting for the project as a whole: Germany (under temporary reservation of Articles 3 and 4, paragraph 2), Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Serbia, Sweden; abstaining: Russia, United States of America. See fifteenth meeting of the committee, September 13, 1907.

⁷ *Reporter*: Mr. FROMAGEOT. See also the Report to the Conference (vol. i, p. 234 [239]).

⁸ Russian program of April 3, 1906, number 3, paragraph 2 (see *ante*, in *initio*).

Our president, Mr. MARTENS, presented it in his *questionnaire*¹ in the following form:

Is it recognized, in practice and in law, that belligerent States may convert merchant ships into war-ships?

When merchant ships are converted into war-ships, what legal conditions should the belligerent States observe?

In a great many countries the law recognizes the right of the State to appropriate merchant ships, particularly in time of war, either by requisition, by chartering or by purchase, and at the same time provides for the recruitment of the necessary force either to man the vessels, or to complete the effective force of its squadrons. The exercise of this right, thus regulated or not regulated in advance, and the organization for mobilization are questions of municipal law.

[1091] What is within the province of international law is the matter of the conditions under which private vessels (merchant ships, fishing boats or pleasure craft) taken into the service of the State, may be considered war-ships, with the rights and duties belonging to such vessels.

This question is of interest to belligerents, at least to those who have abolished privateering; for a private vessel cannot then take part in military acts. It is of no less interest to neutrals, for only vessels belonging to the State possess the right, according to international law, to stop a neutral vessel on the high seas, search its papers, if there be occasion, and, in case of necessity, seize it. Moreover, certain rules of neutrality—sometimes local, such as passage through certain straits; sometimes general, such as the limit of stay or of victualling in neutral ports—apply only to war-ships.

It is clear that international law can require certain conditions of vessels converted into war-ships, for the purpose of assuring the genuineness as well as the reality of their conversion.

Upon this question seven propositions were laid before the Commission by the delegations of Great Britain,² Italy,³ Austria-Hungary,⁴ the Netherlands,⁵ Russia,⁶ Japan,⁷ and the United States of America.⁸

The British proposition, properly speaking, did not aim so much to fix the conditions for the conversion of vessels as to give, as its title indicated, a definition of war-ship and to add to it, as a special category, under the name of "auxiliary vessels," merchant ships flying a neutral or enemy flag and effectively aiding the military forces of the belligerent.

The character and scope of this proposition were separately examined and have been made the subject of a special report.⁹ It will suffice to state here that

¹ Annex 1.

² *Post*, Fourth Commission, annex 2.

³ *Ibid.*, annex 4.

⁴ Declaration of Mr. HEINRICH LAMMASCH (see *ante*, Fourth Commission, second meeting).

⁵ *Post*, Fourth Commission, annex 5.

⁶ *Ibid.*, annex 3.

⁷ *Ibid.*, annex 6.

⁸ *Ibid.*, annex 7.

⁹ See *ante*, Fourth Commission, annex of the eighth meeting of July 24, 1907; see also seventh meeting of July 19, 1907, declaration of his Excellency Lord REAY, and eighth meeting of the Commission, July 24, 1907. In the terms of a declaration of his Excellency Lord REAY (thirteenth meeting of Commission, September 18, 1907), the British delegation withdrew its proposition in regard to the definition of *auxiliary vessel*.

the aim of the British proposition was to assimilate to the military vessels of a naval force all merchant ships, whether employed in the service of this naval force for some purpose, or placed under its orders, or serving as transports for troops, and thus, in any event, evidently giving the belligerent hostile assistance, from the standpoint of the enemy.

The other propositions aimed more directly to give precision to the conditions of conversion.¹

The propositions presented by Italy, the Netherlands, Russia, and the United States agreed in requiring that the commander of a merchant ship converted into a war-ship, should be in the service of the State and that the crew should be a military crew.

The delegation of the Netherlands added that they must fly the naval pennant and be subject to the laws and customs of war; the delegation of Russia likewise proposed that they should be registered in the list of war-ships of the State; the delegation of Austria-Hungary demanded that the conversion be permanent until the end of the war.

The delegations of Great Britain, Japan, the Netherlands, and the United States proposed, moreover, that it be laid down as a principle that converted vessels should be recognized as war-ships only if their conversion takes place in a national port or an occupied port.

The delegation of Italy admitted this same rule, except in respect to vessels that had left their national waters before the outbreak of hostilities.

The delegation of the United Mexican States declared² from the start that it was in favor of the Italian proposition, and adhered to the Austro-Hungarian proposition requiring that the conversion be permanent until the end of the war. The Mexican delegation³ added that its Government meant, by its declaration, to abandon the right of privateering which it had reserved up to that time, and did not hesitate to enter upon the new road of international maritime law, the present tendencies of which are so clearly visible to this Conference.

No difficulty was raised before the Commission as to the right of a belligerent to convert merchant ships into war-ships, and our president, in confirming this, added that this right might be assimilated to the right of engaging militia to reinforce the land army.⁴

As to the conditions for the exercise of this right, without questioning the possibility or impossibility of using neutral waters to effect conversion, it was considered that the question whether it was proper to limit the places where conversion might be effected to national or occupied ports should first be discussed.⁵

The arguments in favor of this proposition were supported especially by the British delegation, who gave the following reasons: conversion on the high seas would leave neutrals in ignorance of the character of a ship which had left

¹ See the analytical table drawn up to that effect (*post*, Fourth Commission, annex 8) in which the various propositions are summarized, with the exception of that of the United States of America, which was submitted afterwards.

² Declaration of his Excellency Mr. ESTEVA, fifth meeting of the Fourth Commission, July 12, 1907.

³ Declaration of his Excellency Mr. ESTEVA, seventh meeting of the Fourth Commission, July 19, 1907.

⁴ Observation of his Excellency Mr. MARTENS, president, second meeting of the Fourth Commission, June 28, 1907.

⁵ Observations of Mr. LAMMASCH and of his Excellency Mr. MARTENS, president, fifth meeting of the Fourth Commission, July 12, 1907.

its last port of departure as a merchant ship; the conversion would be an act of sovereignty, which could be performed only in places where that sovereignty had jurisdiction.¹

The delegation of the Netherlands,² declaring that it supported the British proposition, added that the comparison with militia seemed inaccurate, because converted ships would not in reality be intended for fighting, and showed the danger of abuses which conversion on the high seas would be likely to cause.

The delegation of Brazil was of the same mind,³ and called attention to the necessity of avoiding the possibility of allowing privateering to be resumed [1093] in an indirect form by permitting an arbitrary conversion of merchant ships into war-ships.

While supporting the Austro-Hungarian proposition as to the permanence of conversion, the delegation of Germany,⁴ as well as the delegations of Russia⁵ and France,⁶ maintained, on the contrary, that they could not impose any prohibition against conversion on the high seas. In their opinion, it was one of the most firmly established principles of maritime law that a State has full authority and sovereignty on the high seas over all vessels sailing under its flag. Consequently, if it be true, as the authors of the contrary propositions recognize, that conversion is an act of sovereignty upon a vessel, it is natural to conclude that this act can, like others, be performed on the high seas. As to abuses—the surprise of neutrals, the danger of a return to privateering,—nothing is easier than to provide against them by adopting publicity measures and all other conditions which are proper for the *bona fide* conversion of the vessel.

Finally, the delegation of Italy⁷ showed how its proposition, which was less rigorous than the British proposition, aimed to keep better account of the actual status of vessels at the beginning of war. It would seem, the Italian delegation said, that vessels which had left their waters before the outbreak of hostilities might effect their conversion on the high seas, while nothing prevents those which leave their national waters later from making their military change before leaving. Furthermore, it was added,⁸ it is difficult to admit that a merchant ship leaving a neutral port, where it enjoyed the privileges of a merchant ship, might take advantage of this privilege to convert itself later into a war-ship.

At this stage and without taking a vote, the question was referred to the committee of examination.⁹

Before the committee of examination the same question concerning the prohibition of conversion on the high seas was resumed and discussed. The arguments already presented before the Commission were again developed.¹⁰ The question was put to a vote; but before the vote was taken it was clearly understood that the committee had no intention of declaring itself upon the

¹ Speech of his Excellency Lord REAY, fifth meeting of the Fourth Commission *ante*, July 12, 1907.

² Observations of his Excellency General DEN BEER POORTUGAEL, fifth meeting of the Fourth Commission, July 12, 1907.

³ Speech of his Excellency Mr. BARBOSA, *ibid.*

⁴ Declarations of Rear Admiral SIEGEL, *ibid.*

⁵ Declaration of Colonel OVTCHINNIKOW, *ibid.*

⁶ Declaration of Mr. LOUIS RENAULT, *ibid.*

⁷ Observation of his Excellency Count TORNIELLI, fifth meeting of the Fourth Commission, July 12, 1907.

⁸ Observation of Mr. FUSINATO, *ibid.*

⁹ See fifth meeting of the Fourth Commission, July 17, 1907.

¹⁰ See *ante*, Fourth Commission, first meeting of the committee of examination, August 3, 1907.

existence or non-existence of the right of conversion on the high seas, but only upon the necessity for laying down rules stipulating how belligerents may effect conversion on the high seas. The ballot resulted in an indecisive vote: seven *yeas* to nine *nays*.¹

Upon the proposal of various delegations—notably Italy, the Netherlands,² Sweden, and Belgium³—the committee, after some hesitation, decided [1094] to pass to the next point, and, laying aside the question of the place of conversion, to discuss the other conditions aiming to give neutrals guaranties in conformity with the principles sanctioned by the Declaration of Paris.

Upon the question concerning the permanence of conversion during the entire war, there were likewise divergent views, especially by reason of its connection with the question of the *place* of conversion. The committee decided,⁴ therefore, to leave this question *in statu quo* and, as proposed by the delegations of the Netherlands and Sweden,⁵ to sanction the rules upon which there was agreement, by which the military character of the converted vessel might be readily determined.

Such were the conditions under which the draft herewith was drawn up, the preamble of which indicates its aim and scope.⁶

Considering: That several of the high contracting parties desire, in time of war, to incorporate vessels of their merchant marine in their naval fleets;

That, consequently, it is desirable to define the conditions under which such conversion may be effected, in so far as the rules in this regard are generally accepted;

That, whereas the high contracting parties have been unable to come to an agreement on the question whether the conversion of a merchant ship into a war-ship may take place upon the high seas, it is understood that the question of the place where such conversion is effected remains outside the scope of this agreement and is in no way affected by the following rules:

ARTICLE 1

A merchant ship converted into a war-ship cannot have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of the State whose flag it flies.

The first article lays down the principle which is, so to speak, a corollary of the Declaration of Paris. Its object is to give every guarantee against a return, more or less disguised, to privateering. Every vessel claiming to be belligerent in character must be placed under the authority, direct control and responsibility of the State whose flag it flies.

¹ *Ante*, Fourth Commission, first meeting of the committee of examination. Voting for prohibition of conversion on the high seas, the nine following States: United States of America, Belgium, Brazil, Great Britain, Italy, Japan, Norway, Netherlands, Sweden:—voting *against*: Germany, Austria-Hungary, Argentine Republic, Chile, France, Russia, Serbia.

² Observation of Jonkheer VAN KARNEBEEK, ninth meeting of the committee of examination, August 28, 1907.

³ Observations of his Excellency Mr. HAMMARSKJÖLD and of his Excellency Mr. VAN DEN HEUVEL, tenth meeting of the committee of examination, August 30, 1907.

⁴ See tenth meeting of the committee of examination, August 30, 1907.

⁵ Observations of Jonkheer VAN KARNEBEEK, ninth meeting of the committee of examination, August 28, 1907; and of his Excellency Mr. HAMMARSKJÖLD, tenth meeting of the committee of examination, August 30, 1907.

⁶ *Abstaining*: United States of America (as not having adhered to the Declaration of Paris, 1856), Brazil, Dominican Republic, Ecuador, Haiti, Turkey. See *ante*, thirteenth meeting of the Fourth Commission, September 18, 1907.

ARTICLE 2

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

Article 2 requires that converted vessels bear the external marks which distinguish war-ships, that is to say, the naval flag, if that flag is different from the commercial flag, and the naval pennant. This is a sort of first publicity measure and guarantee given to the neutrals, showing at once the military character of the vessel.

[1095]

ARTICLE 3

The commander must be in the service of the State and duly commissioned by the competent authorities. His name must figure on the list of officers of the fighting fleet.

The object of Article 3 is to assure a *bona fide* conversion and connection with the State.

There had been a question¹ of requiring the commander to have his commander's commission with him and to have on board documents proving the regular conversion of his vessel. It seemed to be more in conformity with practical necessities, and just as satisfactory, to indicate only the requirement that the commander be in the service of the State and regularly commissioned by the competent authorities, that is to say, regularly appointed to his rank and command.

ARTICLE 4

The crew is subject to military discipline.

ARTICLE 5

Every merchant ship converted into a war-ship must observe in its operations the laws and customs of war.

The object of Articles 4 and 5 is likewise to establish firmly the military character of the vessel and its crew. It is clear that, when the converted vessel becomes a real war-ship, it is subject to the obligations of this class of vessel, which counterbalance its rights as a belligerent.

Nevertheless the delegation of the United States of America² declared that it made reservations on Article 5, as that article did not seem necessary, and constituted, in its opinion, a distinction which would be annoying in the case of certain merchant vessels bought and regularly commissioned in time of peace as a part of the United States navy.

ARTICLE 6

A belligerent who converts a merchant ship into a war-ship must, as soon as possible, announce such conversion in the list of war-ships.

The aim of Article 6 is to assure publicity in regard to the conversion.

As has been seen above, the condition of permanent conversion during the entire war could not be expressly sanctioned, as the delegation of Austria-

¹ See *ante*, Fourth Commission, tenth meeting of the committee of examination, August 30, 1907.

² See twelfth meeting of the committee of examination, September 6, 1907, declaration of Rear Admiral SPERRY.

Hungary had demanded. This question appeared to be closely connected with that of the place of conversion. But it was understood ¹ that in abstaining from adopting any rule in this respect, the committee by no means intended to countenance the abuses caused by successive conversions, which are contrary to the spirit of good faith, with which the draft regulation is before all other things inspired.

¹ See *ante*, Fourth Commission, tenth meeting of the committee of examination, August 30, 1907.

[1096]

SIXTEENTH MEETING

SEPTEMBER 16, 1907

His Excellency Mr. **Martens** presiding.

The minutes of the fourteenth meeting are adopted.

Mr. **Fromageot** (reporter) reads his report on the destruction of neutral prizes in case of *force majeure* (see report to the committee of examination annexed to these minutes; see also report to the Conference, vol. i, p. 257 [262]).

His Excellency Sir **Ernest Satow** requests that the words "in case of *force majeure*" in the heading of the report be omitted. The various proposals that have been submitted on this point are entitled "Proposals concerning the destruction of neutral prizes or neutral vessels"; the words "in case of *force majeure*" would seem to prejudice the solution of the question.

The **Reporter** remarks that he followed with a slight modification the formula used in the *Questionnaire*. The words "in case of *force majeure*" seem to cover the situation better than "by reason of *force majeure*" (*pour force majeure*).

His Excellency Sir **Ernest Satow** thinks that there is no condition of *force majeure*, if the destruction of neutral prizes is absolutely prohibited.

The **President** replies that since no one upholds the right to destroy neutral prizes, if no *force majeure* exists, the title of the report seems to correspond with what has actually been the subject of the committee's discussions.

His Excellency Sir **Ernest Satow** does not see any objection to mentioning in the text of the report the condition of the existence of *force majeure*; but he considers it inadvisable to have it appear in the title of the report.

The **President** asks the opinion of the committee on the omission of the words "in case of *force majeure*" in the title of the report.

This omission is adopted.

[1097] The **PRESIDENT** informs the committee that he intends to call a plenary meeting of the Fourth Commission for the day after to-morrow. The committee's work would be completed but for the question of contraband of war which remains to be settled. It would therefore be possible to finish this week, unless the small committee on contraband has not yet completed its work and still hopes to reach an agreement.

Mr. **Kriege** states that on Saturday last the committee on contraband held a meeting at which the projects of the German delegation on postal correspondence and on the transportation of troops were approved. The committee intends to prepare a short Convention on these two projects, which it will submit to the approval of the committee of examination of the Fourth Commission. The committee on contraband has still a few questions to examine at its next meeting, the date of which it is difficult to determine in advance. It will see

whether it is possible to reach a more favorable result in the matter of contraband of war.

His Excellency Count **Tornielli** recalls that among the questions submitted to the consideration of the Fourth Commission was that of blockade. To it the Commission devoted three meetings; the committee has given it only one. There was a discussion on the Italian proposal¹ which did not result in an agreement. It would be desirable, however, that some tangible evidence of this discussion should be preserved, for example, a report, no matter how short. Again, all hope of reaching an agreement on the question of blockade has not yet been lost. It is evident that, if the work of the Conference were to come to an end forthwith, this hope would be lost, but since it is otherwise, we shall be able to see within a few days whether there is occasion to call a meeting of the committee to examine the question of blockade.

The **President** asks that this meeting do not take place unless there is agreement among the Powers most interested in the question and unless the question can therefore be decided at a single meeting.

His Excellency Count **Tornielli** insists that in any event the work that has been done in the matter of blockade be made the subject of a report.

His Excellency Mr. **Hammar skjöld** recalls the relationship between Article 23 of the project on the rights and duties of neutrals at sea² and the subject of the report which Mr. FROMAGEOT has read. We must therefore ask ourselves whether under these circumstances the report can be examined by the Fourth Commission the day after to-morrow and whether it ought not to be examined by the Third and Fourth Commissions combined. It is rather unlikely that a positive result would be reached thereby, but it would be more proper, since there is a relationship between Article 23 and the destruction of neutral prizes, to preserve this relationship in outward form and take a single vote on the two questions.

The **President** observes that the discussion on this point produced a negative result and that it is probable that the meeting of the two Commissions will not change it.

His Excellency Sir **Ernest Satow** observes that the Fourth Commission will have half a dozen reports to approve, and it is unlikely that the work can be completed at a single meeting. In so far as the destruction of neutral prizes is concerned, his Excellency Sir **ERNEST SATOW** has no intention of re-opening the discussion, but such may not be the intention of all the delegations. He asks

himself whether under these circumstances it would not be preferable to [1098] bury the questions upon which it is ascertained that it is impossible to reach an agreement and the further discussion of which would only serve to accentuate the divergent opinions.

His Excellency Mr. **Hammar skjöld** insists upon the necessity of a conclusion—the report contains none—and states that the Commission alone has power to take a definitive stand on the question.

The **President** thinks that the Commission should vote on the conclusions of the report.

His Excellency Mr. **Hammar skjöld** says that it is necessary to vote on the conclusions of the report and on Article 23.

His Excellency Sir **Ernest Satow** observes that some will not vote for

¹ Annex 34.

² *Ante*, Third Commission, annex 63.

Article 23 unless the right to destroy neutral prizes is recognized, while others will not recognize this right unless Article 23 is voted. Under these circumstances, there is no hope that the question will ever be definitely settled. It is therefore preferable not to mention it further.

The **President** proposes under these circumstances that the final sentence of the report be omitted.

Mr. **Kriege** is of the same opinion as his Excellency Sir **ERNEST SATOW**. There is no hope of reaching a result with regard to the question of the destruction of neutral prizes. The report can therefore, without any disadvantage, be suppressed; but we must not do likewise with the reports on questions where results have been reached.

His Excellency Count **Tornielli** thinks that the conclusion of the report is regular. The report is submitted to the Commission; perhaps the Commission will find a solution.

The **President** thinks that there is no hope of reaching an agreement, but it is none the less true that the Commission's right remains intact and that it may take such action as it sees fit.

His Excellency Sir **Ernest Satow** is indeed of the opinion that the Commission retains the right to do as it pleases.

His Excellency Count **Tornielli** asks why under these circumstances the conclusion of the report is not left as it is.

His Excellency Mr. **van den Heuvel** is of his Excellency Count **TORNIELLI**'s opinion. The committee has received instructions from the Commission and must give the Commission an account of its proceedings. It must therefore make a report, which must have a conclusion. The situation will not be changed thereby and the Commission's right to take such action as it sees fit is not modified.

His Excellency Mr. **Keiroku Tsudzuki** asks whether the report might not mention the failure to reach an agreement and the necessity of leaving the question *in statu quo*.

His Excellency Sir **Ernest Satow** thinks that his Excellency Mr. **VAN DEN HEUVEL**'s reason is logical, but the vote on the destruction of neutral prizes will change nothing in the final result; for it is a question in which the majority cannot impose its will upon the minority.

[1099] The **President** is of this opinion, but the committee is agreed upon the Commission's right to take such action as it sees fit. The committee's report might mention this.

His Excellency Count **Tornielli** remarks that out of forty-five States only fourteen are represented in the committee. It would appear to be difficult for the committee to wish to prejudge the opinion of all these States.

The **Reporter** proposes the following conclusion for his report: "Under these circumstances it seemed to the Committee to be difficult to reach an agreement at the present time, but it is in the power of the Commission alone to take definitive action on the question."

The committee adopts this conclusion.

[1100]

Annex

DESTRUCTION OF NEUTRAL PRIZES

REPORT TO THE COMMITTEE OF EXAMINATION ¹

The question of the destruction of neutral prizes in case of *force majeure*, which figures in the Russian program of April 3, 1906,² was intrusted by the Conference to the Fourth Commission for examination.

With a view to giving direction to the arguments and to facilitating the work,³ our president inserted the following questions⁴ in his *questionnaire*:

Is the destruction of merchant ships, sailing under a neutral flag and engaged in the transportation of troops or contraband of war in time of war, prohibited by law or by international practice?

Is the destruction of all neutral prizes by reason of *force majeure* illicit according to laws at present in force and the practice of naval warfare?

Four propositions were presented—by the delegations of Great Britain, Russia, the United States of America, and Japan.⁵ The Commission discussed the principle involved in them and referred them to the committee of examination under the following conditions:

The Russian delegation⁶ proposed to lay down as a principle that the destruction of a prize should be prohibited, except in case its preservation might prejudice the safety of the capturing vessel or the success of its operations. The right of destruction should be exercised by the captor only with the greatest reserve; he should look out for the safety of the persons on board, preserve the ship's papers, and might possibly be required to pay damages.

In the Commission, the Imperial delegation⁷ laid stress especially on the fact that, in its opinion, a vessel which violates neutrality would not longer have a right to the benefits of neutral status; that the very fact of the capture, under conditions recognized as justifying its validity, would cause title to the property

to pass to the captor, who would thus become free to destroy it as his [1101] own property; that in any case the capture should be submitted to a prize court and might give rise to an indemnity. For military or practical reasons, it was added, it might be impossible for the captor to preserve the prize and convoy it to a place of safety. Under such conditions it would be treason indeed to set the prize free, and an absolute prohibition to destroy it would place countries which have ports only on their home coast under an unjustifiable handicap.

¹ *Reporter*: Mr. FROMAGEOT. See also the Report to the Conference, vol. i, p. 257 [262].

² Russian program of April 3, 1906 (vol. i, *in initio*).

³ Remarks of his Excellency Mr. MARTENS, president, twelfth session of Commission, August 7, 1907.

⁴ See *post*, Fourth Commission, annex 1, *questionnaire*, questions XI and XII.

⁵ This last proposition, presented by the Imperial Government as an amendment to the British proposition, was withdrawn in the committee of examination (see *ante*, declaration of his Excellency Mr. KEIROKU TSUBZUKI, eighth meeting of the committee, August 24, 1907).

⁶ *Post*, Fourth Commission, annex 40.

⁷ Speech of Colonel OVTCHINIKOW, twelfth meeting of the Commission, August 7, 1907.

The British proposition¹ and the proposition of the United States of America² on the contrary, aimed at an absolute prohibition against destroying the prize and the obligation to set it free, if it were found impossible to convoy it before a prize court.

The delegation of Great Britain, in support³ of its proposition, took the standpoint of the present law, which it submitted as not authorizing destruction. Replying to the argument above mentioned, based on the difference in the geographical situation of States, it added that if such geographical situation did indeed prevent a State from exercising effectively the right of seizure with respect to neutral vessels carrying contraband or running a blockade, it must nevertheless leave them free.

The Commission was unanimously of the opinion that it was in no way incumbent upon it to investigate what the present law was, but only what law it should promulgate; that it was not called upon to discuss here *de lege lata*, but *de lege ferenda*; and it recognized⁴ the fact that there was a connection between the question of the destruction of prizes and the question of the free access of prizes to neutral ports, which had been submitted to the Third Commission for study; and that, in consequence, there should be a joint study of the questions by the two committees of examination.⁵

In your committee of examination the Russian system of the right of destruction and the Anglo-American system of the prohibition of destruction were taken up and developed.⁶ The delegation of Germany⁷ declared that it was entirely of the point of view of the delegation of Russia.

The Italian delegation⁸ stated the connection which existed, in its opinion, between this question and that of the right of prizes to enter neutral ports, contemplated by Article 23 of the draft regulations upon the access of belligerent vessels to neutral ports and their stay therein, which was elaborated by the committee of examination of the Third Commission.

Pursuant to this last point of view, a meeting of the two committees of examination took place.⁹ In the first place a ballot was taken on the principle of the free access of prizes to neutral ports, established by the said Article 23. This

ballot resulted in 9 votes *for* and 2 votes *against* the principle, with 6 [1102] *abstentions*. A ballot was then taken on the Anglo-American proposition (*prohibition of the destruction of prizes*), resulting in a vote of 11 *for* and 4 *against* the proposition, with 2 *abstentions*; and, finally, a ballot was taken on

¹ *Post*, Fourth Commission, annex 39.

² *Ibid.*, annex 42.

³ Speech of his Excellency Sir ERNEST SATOW, twelfth meeting of the Commission, August 7, 1907.

⁴ Remarks of his Excellency Count TORNIELLI, *ibid.*

⁵ Remarks of his Excellency Mr. MARTENS, president, *ibid.*

⁶ See, in support of the Russian proposition, the speech of Commander BEHR, eighth meeting of the committee, August 24, 1907 (see *ante*);—in support of the Anglo-American propositions, the remarks of his Excellency Sir ERNEST SATOW, *ibid.*; and the eleventh meeting of the committee, September 4, 1907, as well as remarks of General G. B. DAVIS, in the name of the delegation of the United States of America, thirteenth meeting of the committee, September 9, 1907.

⁷ Declarations of Mr. KRIEGE, eighth meeting of committee, August 24, 1907; ninth meeting, August 28; eleventh meeting, September 4; thirteenth meeting, September 9; and the documents printed in annex 43.

⁸ Remarks of his Excellency Count TORNIELLI and his Excellency Mr. FUSINATO, eighth meeting of the committee, August 24, 1907; ninth meeting, August 28.

⁹ See fourteenth meeting of the committee, September 10, 1907.

the Russian proposition (*right to destroy*) resulting in 6 votes *for* and 4 votes *against* the proposition, with 7 *abstentions*.

Such was the result of these deliberations, which may be summed up, it would seem, as follows: The free access of belligerent prizes to neutral ports received a slight majority; the prohibition of the right to destroy, more or less dependent for the most part on such free access, received a slightly greater majority; and, finally, the right to destroy, under any condition, also received a slight majority and a number of abstentions. Under these circumstances, it seemed to the Committee to be difficult to reach an agreement at the present time, but it is in the power of the Commission alone to take definitive action on the question.

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FOURTH COMMISSION
COMMITTEE CHARGED WITH THE STUDY OF THE QUESTION
OF CONTRABAND OF WAR

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FIRST MEETING

AUGUST 12, 1907

His Excellency Lord **Reay** presiding.

His Excellency Mr. **Martens**, as President of the Fourth Commission, opens the meeting, recalling that a committee composed of Mr. **KRIEGE** (Germany), Rear Admiral **SPERRY** (United States of America), his Excellency Mr. **RUY BARBOSA** (Brazil), his Excellency Mr. **AUGUSTO MATTE** (Chile), Mr. **LOUIS RENAULT** (France), his Excellency Lord **REAY** (Great Britain), Captain **BEHR** (Russia), and Mr. **FROMAGEOT** (Secretary of the Commission) has been charged by the Fourth Commission with the study of the question of contraband of war. He proposes that the Bureau of the committee be constituted and that his Excellency Lord **REAY** be elected President. (*Loud applause.*)

His Excellency Lord **Reay** accepts the presidency and proposes that Mr. **FROMAGEOT** be appointed reporter¹ of the committee. (*Assent.*)

The **President** remarks that the proposal of the British delegation² to abandon the principle of contraband of war not having been accepted unanimously, the committee of examination must seek in the other proposals submitted to the Commission elements of a general agreement on this question.

Mr. **Kriege** thinks that it would be more practical, before proceeding to the discussions, to formulate certain questions relating to the matters submitted to the committee's consideration. It seems to him ill-advised to base the discussion on a single one of the projects presented to the Commission, as this might give the delegation responsible for it an advantage.

Mr. **Louis Renault** concurs in this view and proposes that the committee pass successively upon the main points of the various proposals. Since it is admitted that the notion of contraband of war is to continue, it is necessary first of all to know what article will constitute so-called absolute contraband.

[1106] Rear Admiral **Sperry** desires to lay down the general theory on which the proposal of the delegation of the United States of America³ is based. It is very difficult to make up a list of articles constituting contraband which will have an absolute force. Under present conditions, articles intended for military purposes change so rapidly that a list of such articles, even though it were perfect, would remain satisfactory only a few years. It would therefore be desirable to establish a general formula within the limits of which the belligerents themselves could determine the articles constituting contraband. In case of disputes, the prize courts would have to decide whether such or such an article on the list was really contraband of war. The international convention to be concluded should formulate in the first place the definition of articles of absolute contraband, that is to say, articles that are always used for military purposes, and then limit

¹ Report on contraband of war; see report to the Conference, vol. i, p. 250 [256]

² Annex 27.

³ Annex 31.

conditional contraband by means of strict provisions concerning its quality and quantity.

Mr. **Louis Renault** finds that the system advocated by Rear Admiral **SPERRY** has serious drawbacks, since it would result in differences of interpretation. It is to the interest of commerce that the list of contraband articles shall be as clear and exact as possible. He is far from denying that under present conditions such a list could have only a relative value, and he thinks that the suggestion of an English writer that this list be revised every five years is not without foundation. But from the standpoint of shippers, as well as from that of cruisers, a list of specified articles of contraband seems to be preferable to an absolute formula.

Mr. **Kriege** observes that Mr. **LOUIS RENAULT**'s objections relate to the proposal of the delegation of the United States of America, as well as that of the German delegation.¹ He shares entirely the opinion of Rear Admiral **SPERRY** as to the impossibility of determining in advance all articles of contraband. That is why he would have preferred a general clause, defining contraband, which would permit Governments to add new articles to those which were formerly considered as constituting contraband. But at the same time he agrees that it is of the utmost importance to commerce to know what articles are prohibited.

Mr. **Louis Renault** thinks that Mr. **KRIEGE**'s idea is to be found in part in the French proposal.² By its terms articles of absolute contraband are prohibited by their very character; on the other hand the belligerent will have the right to determine by special notification articles of relative contraband. Commerce would be sufficiently informed by the belligerent's declaration on this subject, and at the same time the right to take into account the necessity of supplementing the list of articles of absolute contraband would be reserved. Abuses will be prevented by the possibility of having recourse to diplomatic representations or to the International Prize Court.

Captain **Behr** concurs in Mr. **LOUIS RENAULT**'s opinion, reserving the question of the International Prize Court.

Mr. **Kriege** states that his point of view is entirely in accord with that of Mr. **LOUIS RENAULT**, if there is a general clause permitting belligerents to supplement, if necessary, the list of articles of absolute contraband.

Rear Admiral **Sperry** makes a similar declaration. He thinks that the general formula admitted by the French proposal must not involve the possibility of belligerents' placing restrictions on freedom of commerce, which would be justified only by their own national interests; but that a general agreement should fix the limits of conditional contraband.

His Excellency Mr. **Ruy Barbosa** thinks that it would be desirable not to permit belligerents to abuse their right to determine articles of contraband at the beginning of a war, and that to this end it would be necessary to reach an international agreement concerning the definition of prohibited articles.

Before closing the meeting, the **President** proposes that the committee proceed at its next meeting to examine the lists of articles of absolute contraband contained in the French² and the Brazilian³ projects. The right of every member of the committee to make amendments to this list is reserved.

Captain **Behr** announces his intention of filing at the next meeting an amendment concerning the list of articles of absolute contraband.

¹ Annex 28.

² Annex 29.

³ Annex 30.

SECOND MEETING

AUGUST 15, 1907

His Excellency Lord Reay presiding.

The minutes of the first meeting of the committee are adopted.

The President proposes that the committee discuss the list of articles of absolute contraband as compiled by the French delegation.¹

The PRESIDENT reads item No. 1 of the list:

Arms of all kinds and their distinctive component parts.

Mr. Kriege desires to insert the words, "including arms for sporting purposes," as such arms can be used for military purposes.

This proposal is adopted, and the first item of the list is worded as follows:

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

The President reads item No. 2 of the list, phrased as follows:

Projectiles, charges, and cartridges of all kinds and their distinctive component parts.

This text is adopted unanimously.

The PRESIDENT asks whether any member has any comments to make on item No. 3, whose text reads:

Powders and explosives of all kinds.

Rear Admiral Sperry remarks that the term "explosives of all kinds" appears to him too general. There are explosives that are used in the mining industry and in other peaceful industries.

Mr. de Beaufort concurs in this observation.

Major General Amourel thinks that it would be difficult to draw a distinction between explosives intended for peaceful use and those that are designed for military purposes.

In the discussion on this subject, in which Mr. Fromageot (reporter), Rear Admiral Sperry, Major General Amourel, Mr. de Beaufort, Mr. Kriege, [1109] Captain Behr, Mr. Louis Renault, and Captain Ottley take part, it is brought out that explosives used for military purposes differ in general from explosives intended for peaceful industries (such, for example, as compressed powders of large diameter) and are generally very expensive. Again, nothing would prevent the use of explosives intended for military purposes in this or that peaceful industry.

To remove the objections raised to the wording of item No. 3, Major General Amourel proposes that it be modified to read as follows:

3. Powder and explosives specially prepared for use in war.

This text is adopted unanimously.

¹ Annex 29.

The committee then accepts items Nos. 4 and 5 of the list¹ reading thus:

Gun mountings, limber boxes, limbers, military wagons, field forges,
and their distinctive component parts.
Clothing and equipment of a distinctively military character.

With regard to item No. 6, which reads, "Harness of all kinds," Rear Admiral **Sperry** proposes to limit its scope by adding the words "*military* harness," the French formula seeming to him to be too vague.

Mr. **Louis Renault** accepts this amendment.

Item No. 6 is accepted in the following form suggested by Major General **Amourel**:

6. All kinds of harness of a distinctively military character.

The **President** reads item No. 7:

Saddle, draft, and pack animals.

Rear Admiral **Sperry** considers the wording too broad and would like to make it more restrictive, thus: ". . . animals suitable for military use."

Major General **Amourel** replies that, if saddle, draft, and pack animals are found on a vessel near the theater of war, it would seem to be certain that they are in most instances intended to be used for military purposes and consequently constitute contraband. But in order to meet Rear Admiral **SPERRY**'s objection, he could accept the following form: "Saddle, draft, and pack animals suitable for use in war."

Rear Admiral **Sperry** having concurred in this wording, it is accepted by the committee.

The **President** reads item No. 8 of the list, which is adopted without discussion: "Articles of camp equipment and their distinctive component parts."

With regard to item No. 9: "Naval military material."

Mr. **Kriege** asks himself whether the expression, "naval military material" is sufficiently clear.

Rear Admiral **Sperry** makes a similar observation.

[1110] Mr. **Louis Renault** states that he is ready to withdraw the proposal contained in item No. 9, inasmuch as the essential articles of naval military material are specifically mentioned in item No. 11 of the list.

Captain **Behr** asks whether, if item No. 9 is omitted, articles such as torpedo boat boilers can nevertheless be considered articles of absolute contraband.

Mr. **Louis Renault** replies that torpedo boat boilers are certainly included in the category of articles referred to in item No. 11.

The **President** asks the committee whether, in view of Mr. **LOUIS RENAULT**'s statement, item No. 9 of the list should not be omitted.

It is decided to do so.

Item No. 10 of the list is adopted without discussion: "Armor plates."

The **President** reads item No. 11: "War-ships, including boats, and their distinctive component parts."

Rear Admiral **Sperry** states that he cannot accept the proposed text. In his opinion, there may be component parts of war-ships and boats, whose mili-

¹ Annex 29.

tary character it is very difficult to prove. The delegation of the United States of America is not in favor of the extension of the list of articles of absolute contraband. Among the component parts of a war-ship there are only armor plates, boilers, and machinery which are actually of such a character that they could not be used on merchant ships. He therefore prefers that only the articles aforesaid be mentioned in the list and that the sweeping expression, "distinctive component parts," be omitted.

Major General **Amourel** remarks that it is difficult to enumerate the articles belonging to a war-ship that are distinctive as such. In addition to the articles mentioned by Rear Admiral **SPERRY**, there are others about which there can be no doubt as to their strictly military purpose, as, for instance, electrical apparatus for the transmission of firing and pointing signals and the hydraulic apparatus for conveying ammunition. These articles cannot in any case be used on a merchant ship.

Mr. **Kriege** supports Rear Admiral **SPERRY**'s proposal. If certain of the distinctive component parts of a war-ship should not be covered by the formula proposed by the delegate of the United States, there would be no great danger, since it is proposed to add to the list under discussion a general clause which would allow a belligerent to supplement the enumeration of articles of absolute contraband. This or that article not specifically mentioned in the permanent list of articles of absolute contraband could be added by virtue of this general clause. Under these circumstances, he would prefer to meet the objections of Rear Admiral **SPERRY** in order that the list now under discussion may be adopted unanimously.

Mr. **Louis Renault** thinks that it would be contrary to the fundamental conception of absolute contraband to omit the articles mentioned by General **AMOUREL**, which are without any doubt intended exclusively for use in war.

Mr. **Fromageot**, replying to Mr. **KRIEGE**, remarks that, if the general clause in question is made too broad in scope, the list of articles of absolute [1111] contraband will not render commerce the service which it should render, because there will always be doubt as to whether this or that article constitutes contraband. Again, the fears expressed by Rear Admiral **SPERRY** do not seem to be warranted, as the list mentioned only "distinctive component parts."

Captain **Behr** thinks that the more exact and detailed the list of articles of absolute contraband can be made, the better it would be. Additions to the list by virtue of the general clause referred to by Mr. **KRIEGE** may always give rise to different interpretations and diplomatic claims.

Captain **Ottley** concurs in Rear Admiral **SPERRY**'s opinion, stating that he wants the list to be as limited as possible.

His Excellency Mr. **Augusto Matte** is of the opinion that the Conference must make the list of articles of absolute contraband as complete as possible and not give belligerents an opportunity to abuse the right of supplementing this list on the outbreak of war.

His Excellency Mr. **Ruy Barbosa** states that he is in favor of as restrictive an interpretation as possible of contraband. The Brazilian proposal¹ is inspired by this general consideration. That is why he is opposed to Article 3 of the French proposal,² as well as to the general clause proposed by Mr. **KRIEGE**.

¹ Annex 30.

² Annex 29.

Mr. Louis Renault observes that it is not now a question of relative contraband, covered by Article 3 of the French proposal, of which, by the way, his Excellency **Mr. RUY BARBOSA** has not a correct impression. He proposes therefore that the discussion on absolute contraband be continued and that the objections of Rear Admiral **SPERRY** with regard to item No. 11 of the list be met.

Mr. Kriege replies to his Excellency **Mr. RUY BARBOSA** that the general clause that he advocates is to be found in paragraph 5 of Article 1 of the Brazilian proposal¹ in almost the same words as in paragraph *a* of Article 1 of the German proposal.² The concluding words of the said paragraph 5 could very easily be added as a new paragraph at the end of the French list.

Mr. Louis Renault recalls that the general clause to be added to the French list was accepted to give effect to the observation made with regard to the necessity of taking into account new inventions in the line of articles used in war.

After an exchange of views between **Mr. Kriege** and his Excellency **Mr. Ruy Barbosa**, the President notes that the committee is in complete accord as to the general clause advocated by the delegate of Germany, which is also to be found in the 5th paragraph of Article 1 of the Brazilian proposal, but that the question of a special list notified by the belligerents to neutrals requires careful consideration. He proposes that the committee return to the discussion of item No. 11 of the French list.

On the proposal of Captain **Ottley**, the committee adopts the following amendment of Article 11, to take into account the observations of the delegate of the United States of America:

War-ships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

Rear Admiral **Sperry** feels that he must reserve his vote.

[1112] The President reads item No. 12 of the list: "Balloons and their distinctive component parts."

In view of the impossibility of making a distinction between balloons intended for use in war and those that are not, **Mr. Louis Renault** states that he does not insist upon the adoption of item No. 12.

Item No. 12 of the French list is suppressed.

Item No. 13 is read:

Implements and apparatus specially designed for the manufacture of munitions of war, for the manufacture or repair of arms or military material, for use on land, at sea, or in the air.

Messrs. Louis Renault and **Fromageot** propose that the words "in the air" be stricken out and that "exclusively" be substituted for "specially."

It is decided to do so.

Captain **Behr** recalls that at the last meeting he suggested that a paragraph be added to the list, reading, "Railroad, telegraph, and telephone material." He thinks that railroad, telegraph, and telephone construction work carried on in the theater of war is always for exclusively military purposes and that therefore the transportation of material for such construction may be considered transportation of absolute contraband.

¹ Annex 30.

² Annex 28.

In the face of the objections of Mr. Kriege and Captain Ottley, who contend that this material belongs to the category of relative contraband, Captain BEHR states that he is willing to withdraw his amendment.

The President asks whether the committee wishes to add to the list adopted the general clause that appears in paragraph 5 of Article 7 of the Brazilian proposal.

Mr. Kriege says that the committee has before it three well-nigh identical formulas: that of the German proposal,¹ that of Brazil,² and that of the delegation of the United States of America.³ It is desirable that a reading combining these three formulas should be presented at the next meeting. Articles belonging to the category referred to in this general clause are to be placed on a special list which will be notified to neutrals by the belligerents.

After an exchange of views, in which the President, Messrs. Louis Renault, Kriege, Captain Ottley, and his Excellency Mr. Ruy Barbosa take part, the committee unanimously agrees that a general clause, which will permit the taking into account of new inventions, should be added to the list adopted. Mr. Louis Renault is requested to be good enough to formulate such a clause, which will be discussed at the next meeting.

Mr. Fromageot reads the list of articles of absolute contraband as adopted by the committee.

It is worded as follows:

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
- [1113] 3. Powder and explosives specially prepared for use in war.
4. Gun mountings, limber boxes, military wagons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. All kinds of harness of a distinctively military character.
7. Saddle, draft, and pack animals suitable for use in war.
8. Articles of camp equipment, and their distinctive component parts.
9. Armor plates.
10. War-ships, including boats, and their distinctive component parts of such nature that they can only be used on a vessel of war.
11. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

The President declares the meeting adjourned, stating that the first paragraph of Article 1 of the French proposal,⁴ not having been studied by the committee, is reserved.

¹ Annex 28.

² Annex 30.

³ Annex 31.

⁴ Annex 29.

[1114]

THIRD MEETING

AUGUST 21, 1907

His Excellency Lord Reay presiding.

The minutes of the second meeting are adopted.

Mr. Fromageot announces that he has drawn up the list of articles discussed at the preceding meeting as articles of absolute contraband. He proposes to the committee that this list be preceded by a preamble laying down the principle, and that there be joined to it an item No. 12 permitting new inventions to be taken into account. He has added an Article 2 on relative contraband, which the French delegation, in a spirit of conciliation, would be willing to accept.

The draft reads as follows:

DRAFT REGULATIONS ON CONTRABAND

ARTICLE 1

Trade in the following articles, included under the head of absolute contraband, is, of right, forbidden to neutral ships bound for the enemy forces or country, by the mere fact that a state of war is known to exist:

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

3. Powder and explosives specially prepared for use in war.

4. Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

5. Clothing and equipment of a distinctively military character.

6. All kinds of harness of a distinctively military character.

7. Saddle, draft, and pack animals suitable for use in war.

8. Articles of camp equipment, and their distinctive component parts.

9. Armor plates.

[1115] 10. War-ships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

11. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

12. Implements and articles designed exclusively for use in war or in preparation for war.

ARTICLE 2

On condition of previous notification through diplomatic channels, belligerents have the right to declare to be likewise contraband of war articles

susceptible of use in war or of aiding the enemy State, and to prohibit neutrals to trade in them when they are destined for the military or naval forces or establishments or for any department of the enemy State.

In Mr. Fromageot's opinion, item No. 12 of Article 1 of the project is sufficiently broad and will permit the taking account of new inventions pertaining to war which should figure in the list of articles of absolute contraband. By virtue of Article 2 of the project, articles of relative contraband may be declared such only on condition of special notification. On the other hand, it seems to him that the articles referred to in item No. 12 do not require notification. This would obviate the necessity of the belligerent's giving two kinds of notice.

Rear Admiral **Sperry**, in the name of the delegation of the United States, reads the following declaration:

The delegation of the United States has the honor to announce that the reservation made with regard to item No. 11 of the list of contraband printed in the minutes of the second meeting, August 15, is withdrawn, and that the list is accepted in its entirety.

Before continuing consideration of the question of contraband, the naval delegate deems it desirable to explain briefly the reasons for the proposed procedure on the part of the delegation of the United States.

The rules governing commercial and property rights at sea in time of war are so inextricably interrelated that it is impossible to modify one without having to consider most complicated effects on the administration of others, and it is probably for this reason that, in spite of the fact that the Institute of International Law has been considering this question for a number of years, a maritime code has not yet been formulated. It is true that the Naval War Code of the United States was drawn up in 1900 for the government of the navy, but it was rescinded by order of the President in 1903 for the specific reason that it was found impossible to harmonize the various systems of law with which the officers of the fleet would have to deal, and it was impossible to tie their hands by a rule which had no force with the enemy. If this great body of learned and eminent jurists, publicists, and statesmen, members of the Institute of International Law, has been unable to prepare for naval warfare a series of rules such as the 1899 Conference had at its disposal in the matter of war on land, which emanated for the most part from the said Institute, it is undoubtedly because of the inherent difficulty of such a task.

A list of contraband is a thing apart, and whatever the system of law and aside from the question whether the various systems are improved and harmonized by conventions, the reduction and simplification of the list [1116] of contraband will be a great and lasting boon to commerce, which cannot fail to be recognized.

To this end the naval delegate asks, in the name of the delegation of the United States—

(1) That the list of contraband be studied and adopted entirely without regard to the study and establishment of the international rules which have been discussed for centuries.

(2) That the only articles in which trade is prohibited as the result of a state of war shall be exclusively articles adapted to military use; and these latter are in effect by their nature and in the same degree included in the category of contraband whether in time of peace or in time of war, for a state

of war does not change their purpose, but simply renders them liable to confiscation under certain circumstances.

(3) That a paragraph be added to the list already approved, stipulating that no article is to be included in this list which is not intended exclusively for military use, and moreover that trade in any article whatever not legally included in the list shall never be prohibited as the result of a state of war.

The list of contraband finally established, with the stipulations necessary to exclude once for all the difficult and uncertain question of conditional or accidental contraband, it is certain that the harmonizing of the various opinions on the laws of blockade and of prize will be comparatively easy; but until the question of contraband is settled, it will be well-nigh impossible to predict the effect of a proposed modification of the law.

The President says that, in order to satisfy the opinions expressed in the committee, he has prepared the following draft of a general clause which will permit the taking account of new inventions and which should appear after the first article of the revised French proposal (list of absolute contraband):

12. Other articles used exclusively in war.

The signatory Powers agree to declare by a list what articles belong to this category.

This list and the changes which this list may undergo must be notified in time of peace and may not be augmented after the outbreak of hostilities.

Major General Amourel remarks that there may be new inventions after the outbreak of hostilities and that it should be possible for the belligerent to prohibit the transportation of this or that article of absolute contraband which was unknown before the war. The final paragraph of the President's proposal would deprive the belligerent of this right, which it would seem to be advisable to preserve.

The President replies that the object of his proposal was to forbid belligerents to amend arbitrarily the list of articles of absolute contraband during a war. Notification previous to the outbreak of hostilities seems to give sufficient guarantee against abuses of this kind.

Major General Amourel observes that it was not his intention to dispute this, but, in his opinion, the formula in question would prevent prohibiting the transportation of new engines of war, whose existence was not dreamed of before the war.

Mr. Kriege concurs in this observation.

Captain Behr thinks that the expression, "used exclusively in war," is a sufficient check upon arbitrary action by belligerents.

[1117] The President recognizes the justice of these observations and declares himself ready to withdraw the last paragraph of his proposal on condition that the second paragraph is modified as follows:

The signatory Powers agree to declare, by means of a list, what articles belong to this category and to notify this list.

Mr. Kriege proposes that the following words be added, "to the neutral Governments or their diplomatic agents."

The President remarks that, in his opinion, it would be very useful if the list of articles referred to in item No. 12 were drawn up and notified in time of peace. This would admit of its being discussed and would prevent possible disputes in time of war. While admitting that it is impossible to create such an obligation, he thinks that the door should not be closed to such notifications in

time of peace. This would exclude the wording proposed by the honorable delegate of Germany.

Rear Admiral Sperry says that this is his opinion also.

Mr. Kriege prefers for practical reasons notification after the outbreak of hostilities.

In the opinion of Captain Ottley, previous notification might, on the contrary, be very useful, since it would permit a Government to apply for its part the list of more or less length notified by its enemy.

Mr. Louis Renault remarks that the present discussion is of secondary importance. It is unlikely that inventions will be made that will not be included in the list of articles of absolute contraband adopted by the committee, and it would not be necessary to notify such a list, especially in time of peace. The main question is whether there is absolute contraband only, or conditional contraband as well. Rear Admiral SPERRY's declaration excludes the conception of relative contraband, and this opinion seems to be shared by the British delegation. For his part, he is not prepared to accept such a proposition and thinks that the committee should pass upon the subject, each one retaining his freedom of action.

Rear Admiral Sperry says that the delegation of the United States is not in a position to accept Article 3 of the original French project. In his opinion, trade in articles that do not belong to the list of absolute contraband should not be prohibited. All that would be necessary would be to admit the existence of a special category of services rendered to the belligerent, which, by virtue of the law of nations, would be liable to punishment as "unneutral services"; the act of transporting dispatches of the belligerent, for instance, might involve confiscation of the vessel and imprisonment of the crew.

Mr. Kriege states that the German delegation does not wish to give up the system of relative contraband as formulated in Article 1 of its proposal.¹ It would be dangerous to permit the transportation of articles destined for the service of enemy forces, even though they might be used for peaceful purposes.

Captain Behr is of Mr. KRIEGE's opinion and thinks that it is impossible to do without the conception of relative contraband.

His Excellency Mr. Augusto Matte says that, in his opinion, it would certainly be very desirable to bring about the abolition of relative contraband, [1118] but that in the face of the declarations of the German, French, and Russian delegations rejecting this proposal, it seems to him useless to continue to discuss it. He prefers therefore to seek in the projects relative to conditional contraband submitted to the Commission a common ground of agreement which will admit of making considerable progress as compared with the present situation. He therefore renounces his personal sympathy with the project for the abolition of the conception of relative contraband.

Mr. Kriege remarks that the abolition of relative contraband would have the effect of making legal transportation of coal and provisions directly to the enemy forces, even on the sea, unless the British project on auxiliary vessels is adopted.

The President says that the Fourth Commission not having met for a number of weeks, the British delegation has been unable to state that it had decided to withdraw its proposal concerning auxiliary vessels.² This proposal is not

¹ Annex 28.

² Annex 2.

within the scope of the committee and it will not be submitted to examination by the Conference.

Mr. **Louis Renault** observes that allusion has been made in the course of the debate to "unneutral services."

Even with the **PRESIDENT's** declaration, the consequences of the abolition of relative contraband do not appear to him to have been made sufficiently clear.

Mr. **Kriege** concurs in this view.

The **President** states that opinions on this subject in the committee seem to be equally divided: the delegation of Brazil, as appears from its proposal,¹ the delegations of Chile, of the United States of America, and of Great Britain are in favor of the abolition of relative contraband. On the other hand, the delegations of Germany, of France, and of Russia prefer to preserve the law in force. Nevertheless the British delegation is ready to discuss the projects relating to conditional contraband that have been submitted to the Commission.

Rear Admiral **Sperry** recalls the resolution of the delegation of the United States of America to withdraw for the time being the second paragraph of its proposal.²

His Excellency Mr. **Augusto Matte** thinks that it would be desirable to close the discussion on absolute contraband. The committee has drawn up the list of articles of absolute contraband; it remains for it to pass upon the places where such articles will be liable to seizure. The German proposal permits the seizure of contraband only if the vessel is headed directly for an enemy port or a port occupied by the enemy, or for the armed forces of the enemy.

Mr. **Kriege** prefers that the definition of relative contraband be determined first of all, reserving the question of continuous voyage. This question eliminated, the differences between the German and the French projects are very slight. Such a difference exists, for example, in the definition of relative contraband. While the German proposal considers as relative contraband only articles destined for the armed forces of the enemy, the French project includes also in this category other articles that are destined for various departments of the enemy State.

Mr. **Louis Renault** observes that Article 2 of the revised French project was, in effect, recast, in order to take into account the views and leanings of the committee. The system proposed seems to be a considerable improvement over the situation of neutrals during recent wars. He therefore recommends this system to the committee, as its adoption will constitute real progress.

[1119] Captain **Behr** states that the formula proposed relative to the destination of conditional contraband does not seem to him to be satisfactory, since it will always be easy for the owner to free his cargo of the danger of seizure by addressing it to an individual.

Mr. **Louis Renault** thinks that this is a question of proof.

The **President** concurs in Captain **BEHR's** observation, stating that it is precisely because of the practical difficulties pointed out by the delegate of Russia that Great Britain proposes that the conception of relative contraband be sacrificed.

In the course of an exchange of views instigated by Captain **BEHR's** observation, in which Messrs. **Louis Renault**, **Kriege**, Rear Admiral **Sperry**, Captain

¹ Annex 30.

² Annex 31.

Behr, and **Mr. Fromageot** take part, it is ascertained that the burden of proof as to the enemy destination of conditional contraband is upon the captor, by virtue of the general rule that he who makes a claim must prove his right, but that the officer who effects the seizure will always be permitted to investigate whether the destination of the cargo appearing in the ship's papers is not fraudulent. The captor's freedom of judgment is intact, on condition only that he prove before a prize court that the cargo was destined for the forces of the enemy. Cases may arise in which such destination is to be presumed; absolute presumption, *præsumptio juris et de jure*, is established, for instance, by Article 2 of the German proposal, which reads as follows:

There is absolute presumption that the materials and articles designated in Article 1*b* are destined for the armed force of the enemy when the shipment in question is addressed to the authorities or a military contractor of the enemy Power, or when it is consigned to a fortified place in the enemy country or to some other place serving as a support to the forces of the enemy.

The **President** having inquired whether the delegate of Germany is disposed to admit a list of articles which cannot in any case be considered articles of contraband, **Mr. Kriege** replies that it would be very difficult to do so, as nearly all articles can be used in war and be destined for the armed forces of the enemy.

Rear Admiral **Sperry** states that in the opinion of the delegation of the United States of America it would be very difficult to settle the question of continuous voyage, as well as the consequences of the transportation of contraband, and that is why he proposes that the committee confine itself to deciding the question regarding the nature of articles of conditional contraband.

Messrs. **Louis Renault**, **Kriege**, and **Captain Behr**, on the contrary, think that the two questions mentioned by Rear Admiral **SPERRY** are of vital interest and should be decided by the Conference.

The **President** asks **Mr. KRIEGE** whether Article 4 of the German project¹ regarding the seizure of a vessel carrying contraband refers to conditional contraband as well as absolute contraband.

Mr. Kriege replies in the affirmative.

The **President** remarks that this is not the system established by the original French proposal.²

[1120] **Mr. Louis Renault** replies that the system of preemption established by

Article 4 of that proposal is omitted in the new project filed at the beginning of the meeting. The question of the seizure of a vessel carrying contraband does not present very serious difficulties. The committee is in agreement in considering that the contraband cargo is always liable to seizure. The systems vary as to the quantity of contraband which may entail the capture of the vessel. The French rule, established in the eighteenth century, fixes this amount at three-fourths of the entire cargo; this rule is reproduced in the proposal of his delegation.² However, he is disposed to reduce the figure in order to prevent speculation.

Mr. Kriege says that, so far as he is concerned, he is ready to accept the minimum of one-third or one-fourth, although the German proposal places the figure at one-half.

¹ Annex 28.

² Annex 29.

Major General Amourel asks himself whether there should not be a different rule for the transportation of absolute contraband.

Mr. Louis Renault says that the presence of absolute contraband on board may be unknown to the captain and therefore it would be unjust to confiscate the vessel simply because it had three or four revolvers on board.

Captain Behr points out that the *value* of the articles of contraband as compared with the value of articles of lawful commerce carried by a vessel cannot, in his opinion, serve as a basis. A chest of gold on board a vessel might free it from confiscation, even though the rest of the cargo is contraband. It would perhaps be desirable to take into account not only the value, but also the *volume* and the *weight* of the contraband.

Mr. Fromageot proposes that the basis be the freight charge on the cargo, as shown by the manifests and bills of lading.

Mr. Kriege says that the case referred to by Captain BEHR will certainly be considered an act *in fraudem conventionis* by prize courts.

The President proposes that the committee return to the discussion of item No. 12 of the list of absolute contraband.

Mr. Kriege asks whether in the opinion of the French delegation there should be notification in the matter of the articles referred to in item No. 12.

Mr. Louis Renault would like to avoid the necessity of two notifications to neutrals, one pertaining to articles of relative contraband and the other to articles mentioned in item No. 12. It seems to him fanciful to imagine that inventions will be made which would not come under any of the headings of the list of absolute contraband already drawn up.

Mr. Kriege replies that the declarations relative to contraband made by belligerents during recent wars have always mentioned two classes of prohibited articles and that therefore the inconvenience of two notifications would not be very great in practice.

The President adjourns the meeting, expressing the hope that an agreement may be reached at the next meeting on the questions which have been under discussion.

[1121]

FOURTH MEETING

SEPTEMBER 14, 1907

His Excellency Lord Reay presiding.

The President asks whether there are any observations regarding the minutes of the third meeting.

As no one has any remarks to offer, he declares the minutes adopted and thanks the Secretariat for the care with which they have been drawn up.

The PRESIDENT proposes that the committee take up the discussion of the German delegation's proposal concerning the protection of postal correspondence at sea.¹

Mr. Kriege recalls that he had the honor to set forth the reasons for his proposal before the Fourth Commission. He would like to add a few words. When the German delegation made this proposal, the question of the inviolability of private property at sea had not yet been decided. A modification of the text of the project has become necessary, since the proposal concerning inviolability has been set aside, and the right of capture remains intact. To be specific, the word "neutral" should be inserted in Article 2 before the words "mail steamers."

This article would then read as follows:

Apart from the inviolability of postal correspondence, neutral mail steamers are subject to the same principles as other merchant ships. Nevertheless belligerents shall abstain, in so far as possible, from exercising the right of search with respect to them, and the search shall be pursued with as much consideration as possible.

We might ask ourselves whether we should not also restrict the scope of Article 1 by declaring inviolable only postal correspondence on board neutral ships. The German delegation does not believe it necessary to make such a distinction. In the present state of international intercourse telegraphic communication offers such advantages to belligerents that there would be no danger in proclaiming the inviolability of postal correspondence. That is why the German delegation proposes that Article 1 of the project be preserved intact.

Captain Ottley states that the British delegation is disposed to accept the project, but asks that it be clearly established that the inviolability of [1122] postal correspondence on board mail steamers must not in any way entail the inviolability of these boats, which remain liable to capture.

Mr. Kriege replies that such is the fundamental idea of the German proposal.¹

¹ Annex 44.

Captain Behr says that the Russian delegation accepts the inviolability of postal correspondence under a neutral flag, but not under an enemy flag.

His Excellency General Porter states that his delegation willingly supports the German proposal.

Mr. Kriege states that, in view of the declaration of the delegate of Russia, he is willing to change the wording of Article 1 and to devote a separate paragraph to postal correspondence on board enemy vessels. The Russian delegation could then reserve its vote on that paragraph.

The President proposes therefore that the vote on the German proposal be postponed to the next meeting.

The committee so decides.

His Excellency Count Tornielli inquires whether the German project refers to postal packages or only to postal correspondence.

Mr. Kriege replies that postal packages are certainly excluded from the privileged treatment accorded postal correspondence.

Mr. Hurst remarks that it would perhaps be useful to establish special rules relating to postal correspondence on board a neutral ship and that on board an enemy ship. This distinction might facilitate the final drafting of the body of Conventions voted by the Conference. The rule relating to correspondence on board neutral vessels might be inserted in the project concerning contraband, and that relating to correspondence on board enemy vessels in the draft Convention on naval warfare.

Mr. Kriege believes that it would be premature to take such action until the question of contraband of war has been finally settled.

The President thinks that it is for the committee to pass finally upon the question brought up by Mr. Hurst.

The President proposes that the committee pass to the consideration of the so-called analogous question of contraband which is referred to in Article 6 of the German project on contraband.¹

Mr. Kriege reads Article 6, which is worded as follows:

ARTICLE 6

Vessels which have squads of troops on board are subject to confiscation if the owner or the captain of the vessel was aware of the military character of the passengers in question, and if it is not possible to plead an exception under the circumstances mentioned in paragraph 1 of Article 5. The same is true in the case of the transportation of private passengers belonging to the armed force of the enemy, if the vessel has put to sea for the purpose of transporting them.

Soldiers who are on board remain prisoners of war, even though the vessel is not subject to confiscation.

He says that this article concerns contraband by analogy. This question has frequently been discussed in the theory of the law of nations, but cases pertaining to this category of prohibited transportation have been very rare in practice, so that fixed rules have not yet been established on the subject. The German proposals are based on the idea that, on the one hand, the transportation of troops constitutes a rather serious violation of neutrality, but that, on the other hand, it is well-nigh impossible for the captain of a big steamer having thousands of passengers on board to verify whether there are any military men

¹ Annex 28.

among them. The project permits confiscation of the vessel only in case the bad faith of the captain is manifest, namely:

(1) If there are squads of troops on board the vessel, and

(2) If the transportation of troops is the sole object of the ship's voyage. In all other cases the ship may pass freely. It is, however, understood that soldiers found on board may be made prisoners of war.

Captain **Ottley** says that the British delegation is in principle in favor of the proposed article, but he inquires the meaning of the term "squads of troops."

Mr. **Kriege** declares his willingness to present a revised text at the next meeting.

Mr. **Louis Renault** remarks that the term "squads of troops" presupposes a body of men under military discipline and under command of a military officer. The presence of such a body on board a vessel manifestly proves lack of good faith on the part of the captain. By the very force of things the practically warlike character of such transportation cannot be questioned. The case would be quite different if there should be found on board the vessel a few isolated military passengers, who in this case would be merely private individuals.

Captain **Ottley** recalls that some ten years ago in the Far East one of the belligerents had sunk on the outbreak of hostilities an enemy ship which had a few thousand soldiers and officers on board. In such a case he does not believe the transport could be allowed to pass. The project must in no way prohibit military measures of this nature.

Mr. **Louis Renault** says that in the celebrated case cited by Captain **Ottley** it was a question of an auxiliary vessel carrying aid directly to the enemy and consequently such a vessel must be treated with all due rigor.

Captain **Behr** finds that Article 6, especially in view of the explanations made in the course of the discussion, seems to him to meet all military requirements. He therefore favors the project, subject to revision of the text. [1124] Major General **Amourel** asks for explanations with regard to the second case—whether, for example, reservists coming from a foreign country to be incorporated in the army come under this head. Will they be considered as already forming part of the army? Will the vessel be liable to confiscation?

Mr. **Kriege** replies that reservists who are not yet incorporated in the army should be considered as ordinary travelers. In case there should be such passengers on board, the vessel would not therefore be confiscated.

His Excellency Count **Tornielli** makes a distinction between persons who have already served—true reservists—and persons who are called to the colors only in case of war. He considers that the second paragraph of Article 6, which speaks of squads, does not apply to reservists traveling as individuals, and it would be desirable to establish a distinction between ordinary reservists and reservists *incorporated in the army*.

Finally, he asks himself whether a distinction will be drawn between a vessel that has on board an ordinary squad and one that is carrying a prominent military man.

In Mr. **Kriege's** opinion, the general is naturally made a prisoner of war, but he considers that it would be arbitrary to require the captain of the ship to have knowledge of the eminent military qualities of his passengers. Moreover, it would be very difficult to know at what rank these qualities begin to be

eminent, so as to be able to impute bad faith to the captain of the ship and to apply the penalties that follow upon proof of his bad faith.

Mr. **Louis Renault** observes that the final part of the first paragraph of Article 6 applies only to cases in which a vessel has put to sea under a special contract to transport a military personage, a fact which would necessarily have come to the captain's attention.

Mr. **Kriege** observes that Article 6 mentions Article 5, paragraph 1, which is supplementary thereto, and that it would be desirable to discuss Article 5 in connection with the adoption of Article 6. Article 5 being already accepted in theory and in practice, its adoption will probably not give rise to any objections.

Article 5¹ reads as follows:

ARTICLE 5

The vessel is not subject to confiscation if the captain was in ignorance of the fact that war had broken out and if there is no question as to his ignorance. There is presumption to this effect if the vessel is encountered on the high seas within eight days following the outbreak of hostilities, and if, within this interval, it has not touched at a port.

In the case provided for in the preceding paragraph, the contraband of war on the vessel is subject to confiscation only in consideration of an indemnity.

Captain **Ottley** states that he accepts this article in principle, remarking that the period of eight days seems to him to be arbitrary.

On the President's inquiring whether any one has any comments to make on Article 6, Major General **Amourel** requests that the last sentence of the first paragraph be made to read as follows:

The same is true in the case of private passengers incorporated in the force of the enemy, if the vessel has put to sea for the purpose of transporting them.

[1125] Mr. **Kriege** will be very glad to take advantage of this new formula when he presents his new project to the committee.

The President states that Article 6 is adopted subject to revision of its text.

Captain **Ottley** declares that he concurs in so far as the idea of Article 5 is concerned, but for the time being he makes reservations.

Mr. **Kriege** observes that in the event of Article 5 not being adopted the gist of this article will necessarily have to be inserted in Article 6.

Captain **Ottley** is in any event able to accept this suggestion.

The President reads Article 4,¹ worded as follows:

ARTICLE 4

Contraband of war is subject to confiscation. The same is true of the vessel carrying it if the owner or the captain of the vessel is aware of the presence of contraband on board and if this contraband forms more than half of the cargo.

Mr. **Kriege** recalls that it has been suggested that the owner of the contraband would lose also the goods which he has on board which are not contraband of war. He sees no objection to accepting this rule. Again, the question as to the quantity of contraband that would justify confiscation of the vessel has been under discussion. He would be disposed, as he pointed out at the third

¹ Annex 28.

meeting of the committee, to reduce the proportion, for example, to one-fourth of the cargo.

Captain **Behr** proposes that the quantity of contraband be fixed at one-half the cargo, taking into account not only the value but also the *volume* and the *weight* of the contraband.

Mr. **Fromageot** (reporter) states that it is very difficult in practice to judge according to the method proposed by Captain **BEHR** and proposes that the freight value of the cargo be taken as the basis.

His Excellency General **Porter** desires that the character of contraband be determined before voting on this article.

The **President** considers that his Excellency General **PORTER**'s remark is justified, but since several of the delegations have not formulated their opinion with regard to conditional contraband, he thinks that a discussion on this matter under such conditions would not be very fruitful.

Captain **Ottley** considers it important to ascertain whether the owner or captain had knowledge of the presence of contraband on board, whether the captain has acted in bad faith, and he also thinks that half of the cargo should be taken as a basis. With these general reservations, he is ready to accept Article 4.

Mr. **Hurst** proposes that the second sentence of Article 4 be made to read as follows:

The same is true of the vessel carrying it if the owner or the captain knew or could have known the nature of the prohibited cargo and if . . .

Mr. **Kriege** accepts this proposal, subject to revision of the wording. [1126] Mr. **Louis Renault** thinks that it would be useful to insert in Article 4 of the German proposal the clause, "if the captain resisted seizure," which appears in Article 2 of the French proposal.

After an exchange of views instigated by Mr. **LOUIS RENAULT**'s proposal, in which Messrs. **Kriege**, **Louis Renault**, **Fromageot**, Rear Admiral **Arago**, Captain **Ottley**, and Captain **Behr** take part, it is agreed that confiscation of the vessel is justified only in the event of "manifest" resistance to search or seizure.

The **President** lays before the committee a draft declaration,¹ submitted by the British delegation and distributed to the members of the committee.

The **PRESIDENT** adjourns the meeting, expressing the hope that the question of conditional contraband may be settled at the next meeting.

¹ Annex 33.

[1127]

FIFTH MEETING

SEPTEMBER 24, 1907

His Excellency Lord Reay presiding.

The minutes of the fourth meeting are adopted.

The **President** recalls that an agreement was not reached at the last meeting on the conception of conditional contraband. Consequently it was decided to postpone the debates.

Negotiations undertaken among several of the Powers have been productive of useful results, but unfortunately it has been impossible to bring about a unanimity of views. It would therefore seem to be of no avail to re-open the discussion.

As a positive result, there is the agreement on the question of absolute contraband.

The committee has no further business except to pass upon the project presented by the German delegation¹ relating to the inviolability of postal correspondence.

Mr. Fromageot, at the request of the **PRESIDENT**, reads the revised German project:

ARTICLE 1

The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay. Exception is made in the case of violation of blockade, if the blockaded port is the destination or the starting-point of the correspondence.

The provisions of the preceding paragraph apply likewise to postal correspondence found on the high seas on board an enemy ship.

[1128]

ARTICLE 2

The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to merchant ships in general. The ship may not, however, be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

The **President** thanks **Mr. KRIEGE**, who has been good enough to draft this project, taking into account the observations made on this subject at the last meeting.

Mr. Kriege thanks **Mr. FROMAGEOT** for the assistance which he was so kind as to give him in this task.

¹ Annex 44.

Captain Behr states that he is satisfied with the revised German project which will permit him to make a reservation with regard to paragraph 2 of Article 1.

The President states that the German project¹ relative to the inviolability of postal correspondence is unanimously adopted,² and he confides to Mr. FROMAGEOT the task of drafting a report³ of this committee, which will be presented as soon as possible to the Fourth Commission.

His Excellency Mr. Martens replies that he will, as President of the Fourth Commission, take note of the unanimous adoption of the German project and will have it distributed to the members of the Commission with the least possible delay.

Before closing the proceedings of the committee, the President takes the floor and speaks as follows:

I deeply regret that, in spite of our efforts, we have been unable to come to an agreement as to the regulation of contraband, which would have given satisfaction to commerce.

There has been no lack of good-will, but circumstances independent of our good-will have rendered impossible the accomplishment of our task.

Other projects have demanded the entire attention of the members of this Commission and we have been obliged to recognize the fact that the days left us would not have been sufficient for the accomplishment of a useful piece of work. We have, however, succeeded in reaching an agreement on a list of articles under the head of absolute contraband. This list may serve as the basis for a future agreement. The abolition of contraband was voted for by several of the Powers, and the United States of America has declared that only absolute contraband would be recognized by its Government.

Then the inviolability of postal correspondence has been adopted.

I think that I may also state that we have all been animated by the desire to place restrictions upon the list of articles that may be considered relative contraband.

The question of continuous voyage, which pertains to blockade as well as to contraband, requires careful consideration.

It has been impossible to settle the question of blockade, and I believe that we are all convinced that Governments should without delay cause to be studied the principles of international law which should be applied to blockade as well as to contraband. It is advisable to seize the opportunity that presents [1129] itself while the world in general is at peace to agree upon rules which being promulgated in advance would reduce the differences of opinion to which war might give rise, both as regards belligerents and as regards neutrals. In your name, gentlemen, I offer our sincere thanks to the reporter of this Commission, Mr. FROMAGEOT, whose services rendered to the Conference are appreciated by us all, and to the secretaries, who have so carefully drawn up the minutes, Baron NOLDE in particular. (*Applause.*)

His Excellency Mr. Martens thanks the committee for having laid the foundations of the edifice that is to be built later on.

Mr. Louis Renault asks the committee to thank the President for the impartial way in which he has presided over its meetings. (*Loud applause.*)

¹ Annex 44.

² For the adoption of the project as a whole, see vol. i, p. 232 [236].

³ See report to the Conference, vol. i, p. 260 [266].

ANNEXES

[1133]

Annex 1

QUESTIONNAIRE

PREPARED BY HIS EXCELLENCY, MR. MARTENS, PRESIDENT OF THE FOURTH COMMISSION, TO SERVE AS A BASIS FOR THE DISCUSSIONS OF THAT COMMISSION

I

Is it recognized, in practice and in law, that belligerent States may convert merchant ships into war-ships?

II

When merchant ships are converted into war-ships, what legal conditions should the belligerent States observe?

III

Should the practice now in vogue relative to the capture and confiscation of merchant ships under an enemy flag be continued or abolished?

IV

Is it good practice in war to seize and confiscate, upon the outbreak of hostilities, enemy merchant ships stationed in the ports of one of the belligerent States?

V

Should not these ships be granted the right to depart freely within a fixed time, with or without cargo, from the ports where they happen to be at the beginning of the war?

VI

What is the foundation of the right of belligerent Powers to prohibit commerce in articles constituting contraband of war?

VII

Within what bounds, in law and in fact, can belligerents exercise this right?

VIII

Within what bounds, in law and in fact, must this right be respected by neutrals?

[1134]

IX

Is it necessary to modify the terms of the Declaration of Paris of 1856 as to blockade in time of war?

X

Is it desirable to determine, in the convention to be concluded, the universally recognized consequences of the breaking of an effective blockade?

XI

Is the destruction of merchant ships, sailing under a neutral flag, and engaged in the transportation of troops or contraband of war in time of war, prohibited by law or by international practice?

XII

Is the destruction of all neutral prizes by reason of *force majeure* illicit according to the laws at present in force and the practice of naval warfare?

XIII

Are coastal fishing boats, even though they belong to the subjects of the belligerent State, lawful prize?

XIV

Within what limits are the provisions of the 1899 Convention relative to the laws and customs of war on land applicable to the operations of war at sea?

[1135]

CONVERSION OF MERCHANT SHIPS INTO WAR-SHIPS

Annex 2

PROPOSITION OF THE DELEGATION OF GREAT BRITAIN

Definition of the term "war-ship"

There are two classes of war-ships:

- A. Fighting ships;
- B. Auxiliary vessels.

A. The term "fighting ship" shall include all vessels flying a recognized flag, which are armed at the expense of the State for the purpose of attacking the enemy, and the officers and crew of which are duly authorized for this purpose by the Government to which they belong. It shall not be lawful for a vessel to assume this character except before its departure from a national port, nor to relinquish it except after its return to a national port.

B. The term "auxiliary vessel" shall include all merchant ships, whether belligerent or neutral, which are used for the transportation of sailors, munitions of war, fuel, provisions, water, or any other kind of naval supplies, or

which are designed for making repairs, or charged with the carrying of dispatches or the transmission of information, if the said vessels are obliged to carry out the sailing orders given them, either directly or indirectly, by a belligerent fleet. The definition shall likewise include all vessels used for the transportation of military troops.

Annex 3

PROPOSITION OF THE RUSSIAN DELEGATION

Definition of the term "war-ship"

Every vessel commanded by a naval officer in active service and having a crew governed by the military code is considered a war-ship. The vessel must, by order of its Government, fly the man-of-war flag, and as soon as this order is issued the vessel is considered as registered in the list of the war-ships of its country.

[1136]

Annex 4

PROPOSITION OF THE ITALIAN DELEGATION

Conversion of merchant ships into war-ships

A merchant ship may not be converted into a war-ship unless it is placed under the command of a naval officer of its State and unless it has a crew governed by all the rules of military discipline.

Vessels that leave the territorial waters of their country after the outbreak of hostilities may not change their character either on the high seas or in the territorial waters of another State.

Annex 5. [See *post*, p. 1120.]

[1138]

CONVERSION OF MERCHANT

Annex 8

CONDITIONS TO

	Austria-Hungary (Mr. Tammarch, 2d meeting of Commission, June 28, 1907)	Great Britain (Annex 2)	Italy (Annex 4)
Command.			Naval officer.
Crew.			Crew subject to all the rules of military disci- pline.
Registration.		A. The term "fighting ship" shall include all vessels flying a recognized flag which are armed at the expense of the State for the purpose of attacking the enemy, and the officers and crew of which are duly author- ized for this purpose by the Government to which they belong. It shall not be lawful for a vessel to assume this character ex- cept before its departure from a national port, nor to relinquish it except after its return to a na- tional port.	
Flag.		B The term "auxiliary vessel" shall include all merchant ships, whether belligerent or neutral, which are used for the transportation of sailors, munitions of war, fuel, provisions, water, or any other kind of naval sup- plies, or which are de- signed for making repairs, or charged with the carry- ing of dispatches or the transmission of informa- tion, if the said vessels are obliged to carry out the sailing orders given them, either directly or indirectly, by a belligerent fleet. The definition shall likewise include all ves- sels used for the trans- portation of military troops.	
Ship's Papers.			
Observance of the Laws and Customs of War.			
Place of Conversion.			Vessels that leave the territorial waters of their country after the out- break of hostilities may not change their charac- ter either on the high seas or in the territorial wa- ters of another State.
Duration.	Conversion shall be permanent as long as hostilities last, and re- conversion shall be for- bidden.		
Consequences of in- fraction of legal require- ments for Conversion.			

SHIPS INTO WAR-SHIPS

BE FULFILLED

[1139]

Japan (Annex 6)	Netherlands (Annex 5)	Russia (Annex 3)	United States of America (Annex 7)
	Naval officer.	Naval officer in active service.	Regularly commissioned officer.
	Wholly or partly a naval crew.	Crew subject to the military code.	Crew subject to military law and discipline.
		Registration on list of war-ships of its country	
	Man-of-war flag and pennant or flag of its commander at gaff and masthead.	Man-of-war flag.	
	Commission furnished by competent national authority		
	Commander must respect the customs and laws of war at sea.		
National ports or territorial waters of State to which merchant ship belongs, or ports or territorial waters occupied by its naval or military forces	National port.		Territorial waters of State owning vessel or territorial waters over which it has effective control through its military forces.
	Will be treated as a pirate ship.		

Annex 5**PROPOSITION OF THE NETHERLAND DELEGATION***Conversion of merchant ships into war-ships*

1. It is permissible to convert a merchant ship in the service of the State into a war-ship.
2. Converted vessels must be commanded by a naval officer and their crews must be wholly or partially military.
3. A converted ship must fly at its gaff and at its masthead the man-of-war flag and the pennant or flag of its commander.
4. In time of war, conversion may be effected only in a national port; the converted vessel must there be provided with a commission furnished by the competent authority of the Government whose flag it flies.
5. The commander of a converted vessel must respect the laws and customs of war at sea.
6. All vessels claiming to be war-ships, which do not comply with the above-mentioned conditions, shall be treated as pirate ships.

Annex 6**PROPOSITION OF THE JAPANESE DELEGATION***Conversion of merchant ships into war-ships*

A merchant ship may not be converted into a war-ship except in the national ports or territorial waters of the State to which the merchant ship in question belongs, or in the ports or territorial waters occupied by its naval or military forces.

[1137]

Annex 7**PROPOSITION OF THE DELEGATION OF THE UNITED STATES***Conversion of merchant ships into war-ships*

A war-ship must be commanded by a regularly commissioned officer, and must have a crew under military law and discipline.

In time of war no merchant ship shall be converted into a war-ship unless it is commanded by a regularly commissioned officer and has a crew under military law and discipline, and no conversion of this kind may be effected except in the territorial waters of the State owning the vessel or in the territorial waters over which it has effective control through its military forces.

Annex 8. [See *ante*, pp. 1118-19.]

{1140}

Annex 9

DRAFT REGULATIONS ON THE CONVERSION OF MERCHANT SHIPS INTO WAR-SHIPS, PREPARED BY THE COMMITTEE OF EXAMINATION

ARTICLE 1

A merchant ship converted into a war-ship cannot have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of a State or recognized Government.

ARTICLE 2

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

ARTICLE 3

The commander must have a regularly delivered commission, stating that he is in the service of the State and that he holds his rank and his command from the competent naval authorities.

ARTICLE 4

The crew is subject to military discipline.

ARTICLE 5

Every merchant ship converted into a war-ship must conform itself, in its operations, to the laws and customs of war.

ARTICLE 6

A belligerent who converts a merchant ship into a war-ship must, as soon as possible, announce such conversion in the list of war-ships.

[1141]

INVIOABILITY OF ENEMY PRIVATE PROPERTY AT SEA

Annex 10

PROPOSITION OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Invioability of enemy private property at sea

The private property of all citizens of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure at sea by

the armed vessels or military forces of the said Powers. However, this provision in no way implies the inviolability of vessels which may attempt to enter a port blockaded by the naval forces of the above-mentioned Powers, nor of the cargoes of the said vessels.

Annex 11

PROPOSITION OF THE BRAZILIAN DELEGATION

Inviolability of enemy private property at sea

With the aim of assimilating the status of private property at sea in naval warfare to that of private property on land, the delegation of Brazil proposes, in the event of the American proposition not being approved:

1. That the words "apart from cases governed by maritime law" be struck out of Article 53 of the Convention of July 29, 1899, with respect to the laws and customs of war on land.

2. That the following provision be added:

- A. Articles 23, last paragraph, 28, 46, and 47 of the above-mentioned Convention apply likewise to war at sea.

- [1142] B. When the captain of a vessel or of a belligerent fleet finds himself under the necessity of requisitioning, in the contingency provided for by Article 23, letter *g*, of the above-mentioned Convention—that is to say, in case it is necessary to destroy or to seize these goods on account of the imperative exigencies of war—an enemy's ship, its cargo or any portion thereof, the requisition shall be evidenced by the requisitioner by means of receipts given to the captain of the vessel that has been seized or whose goods have been seized, with all the details possible, in order to ensure the right of the interested parties to just compensation.

- C. This clause applies to neutral goods, which may be on board enemy merchant ships that are requisitioned.

The captain of the vessel or of the war fleet, who has decided to requisition, is obliged to land, at one of the nearest ports, the officers and crew of the seized vessel, with sufficient funds to take them to the country to which they belong.

Annex 12**PROPOSITION OF THE NETHERLAND DELEGATION***Inviolability of enemy private property at sea*

The delegation of the Netherlands is in favor of any proposition that establishes the principle of inviolability of private property at sea.

In order that the possibility of converting merchant ships into auxiliary cruisers in time of war may not be an excuse for not accepting this principle, the delegation submits the following proposition for the consideration of the Commission :

A merchant ship may not be captured by a belligerent party merely for the reason that it is sailing under the enemy flag, if it has a passport given by the competent authority of its country, which passport declares that the vessel will not be converted into a war-ship nor used as such during the entire war.

[1143]

Annex 13**DECLARATION OF THE DANISH DELEGATION***Inviolability of enemy private property at sea*

The Danish Government, desirous of doing its share toward the development of international law, which aims to diminish, in so far as possible, the severities of naval warfare, is ready to recognize the principle of the inviolability of private property at sea, if this principle can obtain the approval of the Conference. But if the time has not yet come for the realization, by common agreement, of this humanitarian idea, the Danish delegation is willing to collaborate in the adoption of measures tending to limit the inconveniences caused by practices that have hitherto been followed.

Annex 14

PROPOSITION OF THE BELGIAN DELEGATION

Rights of belligerents with respect to enemy private property in naval warfare

ARTICLE 1

Enemy merchant ships, as well as enemy goods under the enemy flag, may not be seized and detained by a belligerent except on condition that they be returned at the end of the war.

ARTICLE 2

The following vessels may not be seized or detained:

1. Barks that are engaged exclusively in coastal fishing as well as their gear and their catch of fish.
2. Vessels used exclusively for scientific purposes or subject, by reason of their character as hospital ships, to the provisions of the Hague Convention of July 29, 1899.

ARTICLE 3

A *procès-verbal*, stating the seizure, as well as an inventory of the ship's papers, are drawn up by the commanding officer of the capturing vessel. Copies of these documents are given to the captain of the seized vessel or to his representative.

ARTICLE 4

The captain and the members of the crew of seized enemy ships are landed as soon as circumstances permit.

They are set free upon their promise not to serve against the capturing belligerent as long as hostilities last.

The Government of which they are citizens or subjects must not require or accept from them any service that is contrary to their pledged word.

[1144]

ARTICLE 5

The capturing belligerent takes charge of the enemy vessels and goods which he has seized.

But he is permitted to destroy the seized vessel if circumstances do not admit of its being conveyed to a place of detention, or if the approach of an enemy force makes recapture seem imminent.

ARTICLE 6

Vessels that are in such bad condition that they cannot be preserved, or whose real value is out of proportion to the cost of repairs and of their up-keep, as well as perishable goods, may be sold.

ARTICLE 7

The capturing belligerent has the right to use and convert such seized vessels as he believes he can make use of in war operations.

He has likewise the right to use the seized goods for military purposes.

ARTICLE 8

Ransoming of enemy ships is prohibited.

ARTICLE 9

Upon the termination of hostilities the capturing State must return to their owner the vessels and cargoes which it has detained.

It may effect this restitution at the place where the ships and their cargoes happen to be.

It is not obliged to pay any indemnity for the deprivation resulting from the seizures nor for the deterioration which may have occurred while in custody, unless caused by gross carelessness on its part.

ARTICLE 10

The capturing State must reimburse the owner for the value of such vessels or cargoes as cannot, through its own act, or through the act of its agent, be returned, as well as the amounts realized from the sale of vessels and of goods which it was impossible to preserve.

ARTICLE 11

The execution of the obligations provided by the foregoing article may be entrusted by the belligerent and by virtue of the treaty of peace, to the State to which the seized vessels and cargoes belong.

ARTICLE 12

The foregoing provisions do not modify in any respect the rights which may belong to belligerents by virtue of the rules concerning blockade or contraband of war.

They shall not be applicable to enemy ships that form a part of auxiliary fleets or to those that have taken part in the hostilities.

[1145]

Annex 15

PROPOSAL OF THE NETHERLAND DELEGATION

Amendments to the Proposition of the Belgian Delegation¹ relative to the Rights of Belligerents with respect to Enemy Private Property in Naval Warfare

TEXT OF THE BELGIAN PROPOSAL

AMENDMENTS

ARTICLE 1

Enemy merchant ships, as well as enemy goods under the enemy flag, may ~~not~~ **be** seized and detained by a belligerent **1** except on condition that they be returned at the end of the war.

¹ Annex 14, *supra*.

TEXT OF THE BELGIAN PROPOSAL

J

ARTICLE 2

The following vessels may not be seized or detained:

1. Barks that are engaged exclusively in coastal fishing, as well as their gear and their catch of fish.

2. Vessels used exclusively for scientific purposes or subject, by reason of their character as hospital ships, to the provisions of the Hague Convention of July 29, 1899.

[1146] ARTICLE 3

A *procès-verbal*, stating the seizure, as well as an inventory of the ship's papers, are drawn up by the commanding officer of the capturing vessel. Copies of these documents are given to the captain of the seized vessel or to his representative.

ARTICLE 4

The captain and the members of the crew of seized enemy ships are landed as soon as circumstances permit.

They are set free upon their promise not to serve against the capturing belligerent as long as hostilities last

The ¶ Government of which they are citizens or subjects must not require of or accept from them any service that is contrary to their pledged word.

AMENDMENTS

J ARTICLE 1 a

(Like amended Article 6 of the Belgian proposition.)

ARTICLE 1 b

(Like amended Article 7 of the Belgian proposition.)

ARTICLE 1 c

The belligerent has a right of pre-emption on the enemy goods seized with the ships, if he wishes to use these goods for military purposes. Other seized enemy goods may be sold or detained until the end of the war.

¶ enemy

TEXT OF THE BELGIAN PROPOSAL

AMENDMENTS

ARTICLE 5

The capturing belligerent takes charge of the enemy vessels and goods which he has seized ○

But he is permitted to destroy the seized vessel, if circumstances do not admit of its being convoyed to a place of detention, or if the approach of an enemy force makes recapture seem imminent.

ARTICLE 6 ▤

▤ Vessels that are in such bad condition that they cannot be preserved, or whose real value is out of proportion to the cost of repairs and of their up-keep as well as perishable goods, may be sold.

ARTICLE 7 ▮

The capturing belligerent has the right to use and convert such seized vessels as he believes he can make use of in war operations.

He has likewise the right to use the seized goods for military purposes.

[1147] ARTICLE 8

Ransoming of enemy ships is prohibited.

ARTICLE 9

Upon the termination of hostilities, the capturing State must return to their owner the vessels and cargoes which it has detained ○

▤

It may effect ▮ this restitution at the place where the ships and their cargoes happen to be. It is not obliged to pay any indemnity for the deprivation

○ and detained.

▮ In the event of destruction, the capturing State is obliged to indemnify, with as little delay as possible, the owners of neutral goods on board such vessel.

▮ (Place this article at the end of Article 1 as Article 1 a.)

▤ seized

▮ (Place this article at the end of Article 1 a as Article 1 b.)

○ as well as the vessels which it has used by virtue of Article 1 b.

▤ It may, nevertheless, require the owner of the vessels which it has detained to reimburse it for the expenses incurred in their preservation.

▮ the

TEXT OF THE BRITISH PROPOSAL

AMENDMENTS

resulting from the seizures nor for the deterioration which may have occurred while in custody, unless caused by gross carelessness on its part.

J

ARTICLE 9 a

If the capturing State has used a merchant ship by virtue of Article 1 b, it will not be obliged to pay any indemnity for deterioration or loss which may have resulted, unless the vessel at the time of its seizure was provided with a passport given by the competent authority of its country, declaring that the vessel would not be converted into a war-ship nor utilized as such as long as the war lasted.

ARTICLE 10

The capturing State J must reimburse the owner for the value of such vessels A or cargoes as cannot, through its own act, or through the act of its agent, be returned, as well as the amounts realized from the sale O of vessels and of goods L which it was impossible to preserve.

J Upon the cessation of hostilities the capturing State

A (except those that are not provided with the passport specified in Article 9 a)

O or preemption

L and of vessels which it was impossible to preserve

ARTICLE 11

The execution of the obligations provided by the foregoing article may be entrusted, by the belligerents and by virtue of the treaty of peace, to the State to which the seized vessels and cargoes belong.

[1148] ARTICLE 12

The foregoing provisions do not modify in any respect the rights which may belong to belligerents by virtue of the rules concerning blockade or contraband of war.

They shall not be applicable to enemy ships J that form a part of auxiliary fleet or to those that have taken part in the hostilities.

J converted into war-ships

Annex 16

PROPOSITION OF THE FRENCH DELEGATION

Inviolability of enemy private property at sea

Considering that, although positive international law still admits the legality of the right of capture as applied to enemy private property at sea, it is eminently desirable that the exercise of this right be conditioned on certain formalities, until an understanding may be reached between the States with respect to its abolition;

Considering that it is of the utmost importance that, in conformity with the modern conception of war, which must be waged against States and not against individuals, the right of capture appears to be solely a means of coercion practised by one State against another State;

That, in this connection, all individual profit to the agents of the State, who exercise the right of capture, should be excluded, and that the losses suffered by individuals from captures should ultimately be borne by the State to which they belong;

The French delegation has the honor to propose to the Fourth Commission that the *vœu* be expressed that such States as shall exercise the right of capture abolish the right of the crew of the capturing ships to share in the prizes and take such measures as are necessary to prevent the losses caused by the exercise of the right of capture from falling entirely on the individuals whose goods shall have been seized.

[1149]

Annex 17

PROPOSITION OF THE AUSTRO-HUNGARIAN DELEGATION

*Amendments to the *vœu* presented by the French Delegation¹ concerning the inviolability of enemy private property at sea*

Animated by a strong desire to end the discussion of the Fourth Commission on the inviolability of enemy private property at sea by any improvement, however slight, of present conditions, and believing that the *vœu* proposed by the French delegation contains the elements that are calculated to bring about this end, but nevertheless keeping in mind certain objections that this *vœu* appears to have encountered from a considerable number of the members of this Commission, the delegation of Austria-Hungary has the honor to propose the following amendments to the text submitted by the delegation of France:

(a) Insert after "that such," the words "Powers as maintain the right of making captures," instead of "States as shall exercise the right of capture";

(b) Instead of "take such measures as are necessary," insert the words "endeavor to find a practicable method"; and

(c) Instead of "of the right of capture," put "of this right."

¹ Annex 16.

[1150]

DAYS OF GRACE**Annex 18****PROPOSITION OF THE RUSSIAN DELEGATION***Days of Grace***ARTICLE 1**

In the event of a merchant vessel of either of the belligerents being overtaken by war in the port of the other belligerent, the latter must grant this vessel a sufficient ¹ period, in order to allow it:

To finish its unloading, or the loading of goods which do not constitute contraband of war, and to leave the port freely and reach in safety the nearest port of its country of origin or a neutral port.

ARTICLE 2

A merchant ship which, owing to circumstances of *force majeure*, has been unable to leave the enemy port within the period of grace ² above mentioned, or which may be detained in an enemy port by the authorities on account of the necessities of war, may not be confiscated.

ARTICLE 3

Merchant ships of the belligerents, which are overtaken at sea by the outbreak of war, may not be captured if they left their port of origin or another port before the outbreak of hostilities.

When military conditions require it, these vessels may be detained by the enemy for such period of time as the necessities of war demand.

After these vessels have touched at a port of their country or at a neutral port, they become subject to the laws and customs of naval warfare.

ARTICLE 4

The above-mentioned vessels which arrive in an enemy port enjoy the periods of grace and immunities indicated in the foregoing articles.

¹ The words "of grace" [*de faveur*] in the original proposition have been replaced by "sufficient."

² The words "of grace" [*de faveur*] in the original proposition have been stricken out.

[1151]

Annex 19**PROPOSITION OF THE NETHERLAND DELEGATION**

*Amendment to the proposition of the delegation of Russia (annex 1)
relative to Days of Grace*

ARTICLE 1

The days of grace for each port shall be determined by the belligerents on the outbreak of war; they may not be less than five days.

ARTICLE 2

Days of grace may be refused to enemy merchant ships designed or destined in advance to be converted into war-ships, unless the Government to which they belong engages not to convert them during the course of the war.

Annex 20**PROPOSITION OF THE FRENCH DELEGATION**

*Days of Grace to be granted to enemy merchant ships on the
outbreak of hostilities*

Merchant ships belonging to belligerent Powers which on the outbreak of hostilities happen to be in enemy ports, and to which no days of grace shall be granted to put to sea, may not be confiscated.

Nevertheless they may be refused permission to leave the port, and they are then subject to requisition, in consideration of an indemnity, in conformity with the territorial laws in force.

Annex 21**PROPOSITION OF THE SWEDISH DELEGATION**

*Amendment to the propositions of the delegations of Russia and of France
concerning Days of Grace*

ARTICLE 1

In the event of a merchant ship of either of the belligerents being overtaken by war in a port of the other belligerent, it is desirable that the latter grant to this vessel days of grace, in order to allow it:

To complete its unloading, or the loading of goods which do not constitute contraband of war; and to leave the port freely and reach in safety the nearest port of its country of origin or a neutral port.

[1152]

ARTICLE 2

A merchant ship which, owing to circumstances of *force majeure*, may not have been able to leave the enemy port during the days of grace above mentioned, or to which days of grace may not have been granted, may not be confiscated. It may, however, be detained, on account of the necessities of war, and it is then subject to requisition, in consideration of an indemnity, in conformity with the territorial laws in force.

ARTICLE 3

Merchant ships of belligerents, which are overtaken at sea by the outbreak of war, may not be captured if they have left their port of origin or another port before the outbreak of hostilities.

When military necessities require, these vessels may be detained and requisitioned.

After these vessels have touched at a port of their country or at a neutral port, they become subject to the laws and customs of naval warfare.

ARTICLE 4

If any of the above-mentioned vessels put into an enemy port, they shall enjoy the periods of grace and immunities indicated in the foregoing article.

Annex 22

PROPOSAL OF THE DELEGATION OF THE NETHERLANDS

Days of Grace

Merchant ships belonging to belligerent Powers, which at the outbreak of hostilities happen to be in enemy ports, may, unless their cargo consists of contraband of war, freely leave port and proceed in safety to the nearest national port or an intervening neutral port.

In order that they may complete their loading or unloading, a sufficient period of grace, to be determined by the local authorities, shall be granted them.

Permission to leave and a period of grace may be refused enemy merchant ships designated or intended in advance to be converted into war-ships, unless the Government to which they belong agrees not to convert them as long as the war lasts.

[1153]

Annex 23**DRAFT REGULATIONS PREPARED BY MR. FROMAGEOT***Concerning the status of enemy merchant ships at the outbreak of hostilities***ARTICLE 1**

When a merchant ship belonging to one of the belligerent Powers, and not designated in advance for conversion into a war-ship, is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable period, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

ARTICLE 2

A merchant ship, unable, owing to circumstances of *force majeure*, to leave the enemy port within the period above contemplated, or which was not allowed to leave or was not granted a period within which to leave, cannot be confiscated. It is, however, liable to requisition, but subject to the obligation of restoring it after the war, if this is possible, and to compensate the owner for any loss incurred therefrom.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be confiscated. They are only liable to detention, to be requisitioned if occasion demands, as stated above, and even destroyed on payment of compensation.

After these ships have touched at a port of their own country or at a neutral port, they are subject to the laws and customs of maritime war.

ARTICLE 4

Cargo on board the vessels referred to in the preceding articles is subject to requisition, with or without the ship.

Annex 24**PROPOSAL OF THE DELEGATION OF GREAT BRITAIN**

*Amendment to the draft regulations concerning the status of enemy merchant ships at the outbreak of hostilities, prepared by Mr. Fromageot*¹

Add a new Article 5:

These provisions shall not be applicable to enemy merchant ships designated in advance for conversion into war-ships.

[1154]

Annex 25**DRAFT REGULATIONS PREPARED BY THE COMMITTEE
OF EXAMINATION**

Concerning the status of enemy merchant ships at the outbreak of hostilities.

ARTICLE 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable period, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

ARTICLE 2

A merchant ship, unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated above, or which was not allowed to leave or was not granted a period within which to leave, cannot be confiscated. It is, however, liable to requisition, but subject to the obligation of restoring it after the war, if this is possible, and to compensate the owner for any loss incurred therefrom.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be confiscated. They are only liable to detention, to be requisitioned if occasion demands, as stated above, and even destroyed, on payment of compensation, but in such cases provision must be made for the safety of the persons on board as well as the security of the ship's papers.

¹ Annex 23.

After these ships have touched at a port in their own country or at a neutral port, they are subject to the laws and customs of maritime war.

ARTICLE 4

Enemy cargo on board the vessels referred to in the preceding articles is subject to requisition, with or without the ship, and on payment of compensation, as above.

ARTICLE 5

These regulations do not affect enemy merchant ships which have been designated in advance for conversion into war-ships.

[1155]

Annex 26

PROPOSAL OF THE DELEGATION OF GREAT BRITAIN

DRAFT REGULATIONS

*Amendment to the draft regulations concerning Days of Grace, prepared by the Committee of Examination*¹

ARTICLE 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

ARTICLE 2

A merchant ship, unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated above, or which was not allowed to leave, cannot be confiscated.

It is only liable to detention, without payment of compensation, but subject to the obligation of restoring it after the war or to requisition on payment of compensation.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be captured. They are only liable to detention, *on the understanding that they shall be restored after the*

¹ Annex 25.

war without compensation, or to be requisitioned, or even destroyed, on payment of compensation.

After these ships have touched at a port in their own country or at a neutral port, they are subject to the laws and customs of maritime war.

ARTICLE 4

Enemy cargo on board the vessels referred to in the preceding articles is *likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.*

ARTICLE 5

These regulations do not affect *enemy merchant ships capable of being converted into fighting ships.*

[1156]

CONTRABAND OF WAR

Annex 27

DECLARATION READ BY HIS EXCELLENCY LORD REAY IN THE NAME OF THE BRITISH DELEGATION

Concerning Contraband of War

In order to lessen the difficulties encountered by neutral commerce in time of war, the Government of His Britannic Majesty is ready to abandon the principle of contraband in case of war between the Powers which may sign a Convention to this end. The right of search shall be exercised only in order to determine the neutral character of a merchant ship.

Annex 28

PROPOSITION OF THE GERMAN DELEGATION

Contraband of war

ARTICLE 1

Only the following articles may be considered contraband of war:

(a) Arms, including sporting weapons, as well as such materials as are capable of use only in war (absolute contraband);

(b) Such other materials and articles as may be used in war and are consigned to the armed force of the enemy (conditional contraband),

If they form the cargo of a vessel which is bound directly for an enemy

port or a port occupied by the enemy, or which is destined for the armed force of the enemy, and if these materials and articles have been expressly declared contraband of war.

ARTICLE 2

There is absolute presumption that the materials and articles designated in Article 1*b* are destined for the armed force of the enemy when the shipment in question is addressed to the authorities or a military contractor of the enemy Power, or when it is consigned to a fortified place in the enemy country or to some other place serving as a support to the forces of the enemy.

[1157]

ARTICLE 3

A list of the materials and articles to be considered contraband of war in the meaning of Article 1 must be published or notified to neutral Governments or their diplomatic agents.

ARTICLE 4

Contraband of war is subject to confiscation. The same is true of the vessel carrying it if the owner or the captain of the vessel is aware of the presence of contraband on board and if this contraband forms more than half of the cargo.

ARTICLE 5

The vessel is not subject to confiscation if the captain was in ignorance of the fact that war had broken out and if there is no question as to his ignorance. There is presumption to this effect if the vessel is encountered on the high seas within eight days following the outbreak of hostilities, and if, within this interval, it has not touched at a port.

In the case provided for in the preceding paragraph, the contraband of war on the vessel is subject to confiscation only in consideration of an indemnity.

ARTICLE 6

Vessels which have squads of troops on board are subject to confiscation if the owner or the captain of the vessel was aware of the military character of the passengers in question, and if it is not possible to plead an exception under the circumstances mentioned in paragraph 1 of Article 5. The same is true in the case of the transportation of private passengers belonging to the armed force of the enemy, if the vessel has put to sea for the purpose of transporting them.

Soldiers who are on board remain prisoners of war, even though the vessel is not subject to confiscation.

Annex 29

PROPOSITION OF THE FRENCH DELEGATION

Draft regulations on contraband of war

ARTICLE 1

Trade in the following articles, included under the head of absolute contraband, is, of right, forbidden to neutral nationals by the mere fact that a state of war is known to exist, to wit:

1. Arms of all kinds and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds and their distinctive component parts.
- [1158] 3. Powders and explosives of all kinds.
4. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. Harness of all kinds.
7. Saddle, draft, and pack animals.
8. Articles of camp equipment and their distinctive component parts.
9. Naval military material.
10. Armor plates.
11. War-ships, including boats, and their distinctive component parts.
12. Balloons and their distinctive component parts.
13. Implements and apparatus specially designed for the manufacture of munitions of war, for the manufacture or repair of arms or military material, for use on land, at sea, or in the air.

ARTICLE 2

Absolute contraband is subject to confiscation.

It may cause the confiscation of the vessel on which it is found, if the captain resists seizure or if it is proved that the captain or owner knew, or was in a position to know, the nature of the prohibited cargo.

ARTICLE 3

Neutral commerce in all articles not included in absolute contraband may be freely carried on with belligerents.

Nevertheless, the latter have the right to restrict this liberty on condition that they give notice, through diplomatic channels, of the articles which they intend to intercept, before they proceed to exercise this right.

ARTICLE 4

If it is proved that an article specifically declared contraband of war, in conformity with the foregoing provision, is, at the time of its seizure, not only consigned to an enemy destination, but also really intended for the military or naval forces or departments of the enemy State, such article is subject to confiscation; otherwise seizure of it may not be effected except on condition that the owner be reimbursed for its value.

ARTICLE 5

If the enemy has no access to the sea except through neutral territory, the fact that the transporting vessel is bound for this territory is insufficient to prove that the trade is neutral.

[1159]

Annex 30

PROPOSITION OF THE BRAZILIAN DELEGATION

Contraband of war

(IN THE EVENT OF THE BRITISH PROPOSITION¹ NOT BEING ACCEPTED)

ARTICLE 1

When transported by sea, consigned to a belligerent or for his account, the following articles are contraband of war:

1. Arms of all kinds.
2. Munitions of war and explosives.
3. War material, except the articles mentioned in the Convention of July 29, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention, Article 1, and Articles 14 to 16 of the latter Convention.
4. Vessels equipped for war.
5. Special implements for the manufacture of munitions or other articles exclusively for use in war.

ARTICLE 2

Articles which in combination may become suitable for war are included in the category of munitions.

ARTICLE 3

Destination for the enemy of articles for special and immediate use in war, as defined in Article 1, is presumed, when they are being carried to one of his ports, to one of his war-ships, or to a neutral port, if the latter, according to evident proof and indisputable facts, is only an intervening point for the purpose of deceiving the belligerents as to the real destination of the shipment.

ARTICLE 4

Articles, which are not made for war and are used in war specially and immediately, may not be considered contraband merely because of the possibility, the intention, or even the fact of their being destined for the enemy or for his use.

Conditional contraband and accidental contraband are therefore abolished.

¹ Annex 27.

ARTICLE 5

Nevertheless the belligerent may, if he so wishes, exercise the right of sequestration or of ~~preemption~~ with respect to provisions, coal, raw cotton, and articles of clothing, destined either for an enemy port or for a neutral port, when the latter may be considered, according to the clear, evident, and indisputable facts, as an intervening point in enemy destination.

[1160] In the first case the State of the captor shall eventually return to the owner the sequestered cargo, indemnifying him for his loss. In the second case it shall pay him the price of the merchandise bought, according to its value on the bill, plus the freight, as well as other charges, and 10 per cent. in consideration of the lost profits.

ARTICLE 6

The right admitted in the preceding article ceases, if the captain of the stopped vessel binds himself in writing, under the penalty of suffering all the effects of contraband of war in case he breaks his word, to change the destination of his vessel to a port which may not reasonably be suspected of concealing a hostile destination.

ARTICLE 7

In case of seizure or repression on account of contraband, not in conformity with the foregoing rules, the State of the captor shall be required to return the seized articles with damages.

ARTICLE 8

Penal measures for contraband of war, that is to say, capture and condemnation by prize courts, do not apply to shipments which started before the declaration of war.

Annex 31

PROPOSITION OF THE DELEGATION OF THE UNITED STATES

Contraband of war

1. Absolute contraband shall include arms, munitions of war, provisions, and articles which are employed solely for military purposes or for military establishments.

2. Conditional contraband shall include provisions, material, and articles which are employed both in peace and in war, but which by reason of their character or special qualities, or their quantity, or by their character, quality, and quantity, are suitable and necessary for military purposes, and which are destined for the use of the armed forces or for the military establishments of the enemy.

3. The list of the articles and provisions which are to be included in each of the above-mentioned classes must be duly published and notified to neutral Governments, or their diplomatic agents, by the belligerents, and no article shall be seized or confiscated as conditional contraband until this notice has been given.

**TABLE OF PROPOSALS RELATIVE TO
CONTRABAND OF WAR**

[1162]

I GREAT BRITAIN (Annex 27)	II GERMANY (Annex 28)	III FRANCE (Annex 29)
<p>In order to lessen the difficulties encountered by neutral commerce in time of war, the Government of His Britannic Majesty is ready to abandon the principle of contraband in case of war between the Powers which may sign a Convention to this end. The right of search shall be exercised only in order to determine the neutral character of a merchant ship.</p>	<p style="text-align: center;">ARTICLE 1</p> <p>Only the following articles may be considered contraband of war:</p> <p>(a) Arms, including sporting weapons, as well as such materials as are capable of use only in war (absolute contraband);</p> <p>(b) Such other materials and articles as may be used in war and are consigned to the armed force of the enemy (conditional contraband),</p> <p>if they form the cargo of a vessel which is bound directly for an enemy port or a port occupied by the enemy, or which is destined for the armed force of the enemy, and if these materials and articles have been expressly declared contraband of war.</p> <p style="text-align: center;">ARTICLE 2</p> <p>There is absolute presumption that the materials and articles designated in Article 1 (b) are destined for the armed force of the enemy when the shipment in question is addressed to the authorities or a military contractor of the enemy Power, or when it is consigned to a fortified place in the enemy country to some other place serving as a support to the forces of the enemy.</p>	<p style="text-align: center;">ARTICLE 1</p> <p>Trade in the following articles, included under the head of absolute contraband, is, of right, forbidden to neutral nationals by the mere fact that the state of war is known to exist, to wit:</p> <ol style="list-style-type: none"> 1. Arms of all kinds and their distinctive component parts. 2. Projectiles, charges, and cartridges of all kinds and their distinctive component parts 3. Powders and explosives of all kinds. 4. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts. 5. Clothing and equipment of a distinctively military character. 6. Harness of all kinds. 7. Saddle, draft, and pack animals. 8. Articles of camp equipment and their distinctive component parts. 9. Naval military material. 10. Armor plates. 11. War-ships, including boats, and their distinctive component parts 12. Balloons and their distinctive component parts. 13. Implements and apparatus specially designed for the manufacture of munitions of

[1163] IV
BRAZIL
(Annex 30)

ARTICLE I

When transported by sea, consigned to a belligerent or for his account, the following articles are contraband of war:

1. Arms of all kinds.
2. Munitions of war and explosives.
3. War material, except the articles mentioned in the Convention of July 29, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention, Article 1, and Articles 14 to 16 of the latter Convention.
4. Vessels equipped for war.
5. Special implements for the manufacture of munitions or other articles exclusively for use in war.

ARTICLE 2

Articles which in combination may become suitable for war are included in the category of munitions.

ARTICLE 3

Destination for the enemy of articles for special and immediate use in war, as defined in Article 1, is presumed, when they are being carried to one of his ports, to one of his warships, or to a neutral port, if the latter, according to evident proof and indisputable facts, is

V
UNITED STATES OF
AMERICA
(Annex 31)

1. Absolute contraband shall include arms, munitions of war, provisions, and articles which are employed solely for military purposes or for military establishments.
2. Conditional contraband shall include provisions, materials, and articles which are employed both in peace and in war, but which by reason of their character, quality, and quantity, are suitable and necessary for military purposes, and which are destined for the use of the armed forces or for the military establishments of the enemy.
3. The list of articles and provisions which are to be included in each of the above-mentioned classes must be duly published and notified to neutral Governments, or their diplomatic agents, by the belligerents, and no article shall be seized or confiscated as conditional contraband until this notice has been given.

I
GREAT BRITAIN
(Annex 27)

II
GERMANY
(Annex 28)

III
FRANCE
(Annex 29)

ARTICLE 3

A list of the materials and articles to be considered contraband of war in the meaning of Article 1 must be published or notified to neutral Governments or their diplomatic agents.

ARTICLE 4

Contraband of war is subject to confiscation. The same is true of the vessel carrying it if the owner or the captain of the vessel is aware of the presence of contraband on board and if this contraband forms more than half of the cargo.

ARTICLE 5

The vessel is not subject to confiscation if the captain was in ignorance of the fact that war had broken out and if there is no question as to his ignorance. There is presumption to this effect if the vessel is encountered on the high seas within eight days following the outbreak of hostilities, and if, within this interval, it has not touched at a port.

In the case provided for in the preceding paragraph, the contraband of war on the vessel is subject to confiscation only in consideration of an indemnity.

ARTICLE 6

Vessels which have squads of troops on board are subject to confiscation if the owner or the captain of the vessel was aware of the military character of the passengers in question, and if it

war, for the manufacture or repair of arms or military material, for use on land, at sea, or in the air.

ARTICLE 2

Absolute contraband is subject to confiscation.

It may cause the confiscation of the vessel on which it is found, if the captain resists seizure or if it is proved that the captain or owner knew, or was in a position to know, the nature of the prohibited cargo.

ARTICLE 3

Neutral commerce in all articles not included in absolute contraband may be freely carried on with belligerents.

Nevertheless, the latter have the right to restrict this liberty on condition that they give notice, through diplomatic channels, of the articles which they intend to intercept, before they proceed to exercise this right.

ARTICLE 4

If it is proved that an article specifically declared contraband of war, in conformity with the foregoing provision, is, at the time of its seizure, not only consigned to an enemy destination, but also really intended for the military or naval forces or departments of the enemy State, such article is subject to confiscation; otherwise seizure of it may not be effected except on condition that the owner be reimbursed for its value.

IV

BRAZIL

(Annex 30)

only an intervening point for the purpose of deceiving the belligerents as to the real destination of the shipment.

ARTICLE 4

Articles, which are not made for war and are used in war especially and immediately, may not be considered contraband merely because of the possibility, the intention, or even the fact of their being destined for the enemy or for his use.

Conditional contraband and accidental contraband are therefore abolished.

ARTICLE 5

Nevertheless the belligerent may, if he so wishes, exercise the right of sequestration or of preemption with respect to provisions, coal, raw [1165] cotton, and articles of clothing destined either for an enemy port or for a neutral port, when the latter may be considered, according to the clear, evident, and indisputable facts, as an intervening point in enemy destination.

In the first case the State of the captor shall eventually return to the owner the sequestered cargo, indemnifying him for his loss. In the second case, it shall pay him the price of the merchandise bought, according to its value on the bill, plus the freight, as well as other charges, and 10 per cent. in consideration of the lost profits.

V

UNITED STATES OF AMERICA

(Annex 31)

I
GREAT BRITAIN
(Annex 27)

II
GERMANY
(Annex 28)

III
FRANCE
(Annex 29)

is not possible to plead an exception under the circumstances mentioned in paragraph 1 of Article 5. The same is true in the case of transportation of private passengers belonging to the armed force of the enemy, if the vessel has put to sea for the purpose of transporting them.

Soldiers who are on board remain prisoners of war, even though the vessel is not subject to confiscation.

ARTICLE 5

If the enemy has no access to the sea except through neutral territory, the fact that the transporting vessel is bound for this territory is insufficient to prove that the trade is neutral.

IV

BRAZIL

(Annex 30)

ARTICLE 6

The right admitted in the preceding article ceases, if the captain of the stopped vessel binds himself in writing, under the penalty of suffering all the effects of contraband of war in case he breaks his word, to change the destination of his vessel to a port which may not reasonably be suspected of concealing a hostile destination.

ARTICLE 7

In case of seizure or repression on account of contraband, not in conformity with the foregoing rules, the State of the captor shall be required to return the seized articles with damages.

ARTICLE 8

Penal measures for contraband of war, that is to say, capture and condemnation by prize courts, do not apply to shipments which started before the declaration of war.

V

UNITED STATES OF
AMERICA

(Annex 31)

[1166]

Annex 33

PROPOSAL OF THE DELEGATION OF GREAT BRITAIN

Draft Declaration

The undersigned plenipotentiaries of the Powers represented at the Second International Peace Conference at The Hague,

Considering:

That the extension of the commercial movement and the progress of science have had the effect of diminishing sensibly the effective force of the laws and customs of nations for the suppression of contraband trade;

That any attempt at a strict application of regulations on the subject under existing conditions of international commerce would be calculated to hinder the commerce of neutrals and to cause them material loss far in excess of the advantages accruing therefrom to belligerents;

That the seizure of neutral vessels for carrying contraband gives rise to serious difficulties between neutrals and belligerents, and may lead to grave disputes between the States at issue;

Duly authorized for this purpose by their Governments:

Declare:

1. Goods belonging to the subject of a neutral contracting Power on board a neutral or enemy ship may not be condemned as contraband;

2. The flag of a neutral contracting Power covers all the goods on board.

The present Declaration is binding only upon the contracting Powers in the event of war between two or more of them.

It shall cease to be binding if in a war between contracting Powers a non-contracting Power should join one of the belligerents.

The present Declaration shall be ratified with as little delay as possible.

The ratifications shall be deposited at The Hague.

A minute of the deposit of each ratification shall be drawn up, of which a certified copy shall be forwarded through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to this Declaration. To do so, they must make known their adhesion to the contracting Powers by means of a written notice addressed to the Government of the Netherlands, to be transmitted by the latter to all the other contracting Powers.

In the event of one of the high contracting Powers denouncing the present Declaration, the denunciation shall only have effect one year after written notice to the Government of the Netherlands, which notice shall be communicated at once by the latter to all the other contracting Powers.

This denunciation shall only have effect in regard to the notifying Power.

In faith whereof the plenipotentiaries have signed and sealed the present Declaration.

{1167]

BLOCKADE**Annex 34****PROPOSITION OF THE ITALIAN DELEGATION***Blockade***ARTICLE 1**

In order to be binding, a blockade must be effective, declared, and notified.

ARTICLE 2

A blockade is effective when it is maintained by naval forces that are really sufficient to prevent passage, and so stationed as to render it clearly dangerous for vessels to attempt to run the blockade.

A blockade is not considered as lifted if bad weather forces the blockading vessels to leave their stations temporarily.

ARTICLE 3

The declaration of blockade must indicate the exact time that the blockade begins, its limits by longitude and latitude, and the period within which neutral vessels which entered the port before the beginning of the blockade are permitted to leave.

ARTICLE 4

The declaration must be notified to the authorities of the blockaded place and the Governments of neutral States.

If such notice has not been given, or if a vessel approaching the blockaded port proves that it was not aware of the blockade, notice must be given to the vessel itself by an officer of one of the blockading vessels, and registered on the ship's papers.

ARTICLE 5

A vessel may not be seized as guilty of violation of blockade except at the time that it attempts to break through the lines of an obligatory blockade.

ARTICLE 6

Vessels are permitted to enter a blockaded port in case of distress, which must be verified by the commanding officer of the blockading fleet.

ARTICLE 7

A vessel seized for violation of blockade may be confiscated, as well as its cargo, unless the owner of the latter proves that the attempt to violate the blockade was made without his knowledge.

[1168]

Annex 35**PROPOSITION OF THE DELEGATION OF THE UNITED STATES***Amendments to the proposition of the Italian Delegation concerning Blockade*¹**ARTICLE 3**

Omit the words "by longitude and latitude."

ARTICLE 5

Omit the article and substitute:

Any vessel which, after a blockade has been duly notified, sails for a port or a place that is blockaded, or attempts to force the blockade, may be seized for violation of the blockade.

Annex 36**PROPOSITION OF THE BRAZILIAN DELEGATION***Amendment to the Italian Proposition of Blockade*¹

1. A blockade is effective, under the conditions stipulated in the Italian proposition (Article 2), only when it is limited to ports, roadsteads, anchorages, bays or other landing places on the enemy shore, as well as places giving access thereto.

2. The Conference shall fix a certain number of miles, calculated from the coast, at low tide, or from an imaginary line between the extremities of the port or of the bay, as well as from the said extremities along the coast, in order to limit the area within which the blockading fleet shall carry on blockade operations.

3. When a vessel is captured within these limits, the above-mentioned conditions having been fulfilled, no question as to the effectiveness of the blockade may be raised.

4. Notice as provided in Article 4 of the Italian proposition shall, in all cases, be presumed to be known, unless the contrary is proved, to vessels which have left ports within the jurisdiction of the notified Government seven whole days after the date of the said notice.

5. Changes in the blockade must likewise be notified and shall not bind neutrals unless the geographical limits are indicated in accordance with the provision above (Article 2).

¹ Annex 34.

[1169]

Annex 37

PROPOSITION OF THE BRITISH DELEGATION

*Amendments to the Proposition of the Italian Delegation concerning Blockade*¹

ARTICLE 2, PARAGRAPH 1

Substitute the word "real" for "evident."

ARTICLE 3

See amendment proposed by the delegation of the United States of America.²

ARTICLE 4, PARAGRAPH 2

Substitute the words "a neutral vessel approaching" for "the vessel approaching."

ARTICLE 5

See amendment proposed by the delegation of the United States of America.²

Annex 38

PROPOSITION OF THE NETHERLAND DELEGATION

*Amendment to the Italian Proposition on Blockade*¹

NEW ARTICLE 3, PARAGRAPH 2

The declaration of blockade can be notified by a belligerent only with respect to an enemy coast-line.

¹ Annex 34.

² Annex 35.

[1170]

DESTRUCTION OF NEUTRAL PRIZES**Annex 39****PROPOSITION OF THE BRITISH DELEGATION***Destruction of neutral prizes*

Destruction of a neutral prize by the captor is prohibited. The captor must release all neutral vessels that he is unable to bring before a prize court.

Annex 40**PROPOSITION OF THE RUSSIAN DELEGATION***Destruction of neutral prizes*

Believing that the absolute prohibition of the destruction of neutral prizes by belligerents would bring about a situation of striking inferiority in the case of Powers that have no naval bases except on their own coasts, and being of the opinion that all international agreements should be founded upon the principle of reciprocity and equal opportunity,

The Imperial delegation of Russia submits to the consideration of the Fourth Commission the following draft of a provision relating to the destruction of prizes, a provision which seems to it to take into account all the interests at stake:

The destruction of a neutral prize is prohibited except in cases where its preservation might endanger the safety of the capturing vessel or the success of its operations. The commanding officer of the capturing vessel may exercise the right of destruction only with the greatest discretion, and must take care to tranship beforehand the crew, and, in so far as possible, the cargo, and in all cases preserve all the ship's papers and all other articles that are necessary for a prize decision and for the fixing of the indemnities to be granted to neutrals, if occasion requires.

It is thoroughly understood that in case the seizure or destruction of neutral prizes is recognized as illegal by a prize court or by the competent authorities, the interested parties have a right to bring action for damages.

[1171]

Annex 41**PROPOSAL OF THE DELEGATION OF JAPAN***Amendment to the British¹ and Russian² Proposals on the destruction of neutral vessels*

Destruction of a neutral prize by the captor is prohibited. The captor must release all neutral vessels that he is unable to bring before a prize court.

However, the rule is subject to the following exceptions:

(a) If the vessel is in the military service of the enemy or under his control for military or naval purposes.

(b) If the vessel offers forcible resistance to search or capture.

(c) If the vessel attempts to escape search or capture by taking to flight.

¹ Annex 39.

² Annex 40.

Annex 42**PROPOSITION OF THE DELEGATION OF THE UNITED STATES***Destruction of neutral prizes*

If for any reason whatever a captured neutral vessel cannot be brought to adjudication, such vessel must be released.

Annex 43**PROFESSOR HOLLAND'S LETTERS ON THE DESTRUCTION
OF NEUTRAL PRIZES**

The *Times*, August 17, 1904.

RUSSIAN PRIZE LAW

TO THE EDITOR OF THE *Times*.

Sir: From this hilltop I observe that, in the debate of Thursday last, Mr. GIBSON BOWLES, alluding to a letter of mine which appeared in your issue of August 6, complained that I "had not given the proper reference" to [1172] Lord STOWELL's judgments. Mr. BOWLES seems to be unaware that in referring to a decided case the page mentioned is, in the absence of any indication to the contrary, invariably that on which the report of the case commences. I may, perhaps, also be allowed to say that he, in my opinion, misapprehends the effect of the passage quoted by him from the *Felicity*, which decides only that, whatever may be the justification for the destruction of a neutral prize, the neutral owner is entitled, as against the captor, to full compensation for the loss thereby sustained.

I am, Sir,

Your obedient servant,

T. E. HOLLAND.

EGGISHORN, VALAIS, SUISSE, Aug. 14.

The *Times*, August 30, 1904.

RUSSIAN PRIZE LAW

TO THE EDITOR OF THE *Times*.

Sir: Mr. GIBSON BOWLES has, I find, addressed to you a letter in which he attempts to controvert two statements of mine by the simple expedient of omitting essential portions of each of them.

I. pp

II. I had summarized the effect, as I conceive it, of the group of cases above mentioned in the following terms: "Such action is justifiable only in cases of the gravest importance to the captor's own State, after securing the ship's papers,

and subject to the right of the neutral owners to receive full compensation." Here, again, while purporting to quote me, Mr. BOWLES omits the all-important words now italicized. I am, however, maltreated in good company. Mr. BOWLES represents Lord STOWELL as holding that destruction of neutral property cannot be justified, even in cases of the gravest importance to the captor's own State. What Lord STOWELL actually says, in the very passage quoted by Mr. BOWLES, is that "to the neutral it can only be justified, under any such circumstances, by a full restitution in value." I would suggest that Mr. BOWLES should find an opportunity for reading *in extenso* the reports of the *Acteon*¹ and the *Felicity*,² as also for re-reading the passage which occurs at p. 386 of the latter case, before venturing further into the somewhat intricate technicalities of prize law.

I am, Sir,

Your obedient servant,

T. E. HOLLAND.

EGGISHORN, SUISSE, Aug. 26.

¹ 2 *Dodson*, 48.

² *Ibid.*, 381.

[1173]

PROTECTION OF POSTAL CORRESPONDENCE AT SEA**Annex 44****PROPOSITION OF THE GERMAN DELEGATION***Protection of postal correspondence at sea***ARTICLE 1**

Postal correspondence shipped by sea is inviolable, whatever its character, official or private, and whether it is the correspondence of neutrals or of belligerents.

In case of the seizure of the vessel carrying this correspondence, provision shall be made to forward it by the quickest route possible.

ARTICLE 2

Apart from the inviolability of postal correspondence, mail steamers are subject to the same principles as other merchant ships. Nevertheless belligerents shall abstain, in so far as possible, from exercising the right of search with respect to them, and the search shall be pursued with as much consideration as possible.

[1174]

**THE CREWS OF ENEMY MERCHANT SHIPS CAPTURED BY A
BELLIGERENT****Annex 45****PROPOSITION OF THE BRITISH DELEGATION ¹***Draft Regulations concerning the neutral members of a belligerent crew*

When a merchant ship of the enemy, which is sailing on a purely commercial mission, is captured by a belligerent, the members of its crew who are subjects or citizens of a neutral Power shall not be made prisoners of war.

The same rule shall apply in the case of officers who fulfill the same conditions, if their engagement was prior to the outbreak of hostilities and if they formally promise not to continue to serve on an enemy vessel while the war lasts.

Annex 46**PROPOSITION OF THE BELGIAN DELEGATION***Amendment to the British Proposition ² relative to the crews of enemy merchant ships captured by a belligerent*

When a merchant ship of the enemy which is sailing on a purely commercial mission is captured by a belligerent, the members of its crew are not made prisoners.

They are landed as soon as circumstances permit, and are set free upon their promise not to serve against the capturing belligerent as long as hostilities last.

The Government of which they are citizens or subjects is required not to demand of them and not to accept from them any service contrary to their pledged word.

[1175]

Annex 47**PROPOSITION OF THE BRITISH DELEGATION***Amendment to its proposition concerning the neutral members of a belligerent crew ²*

When a merchant ship of the enemy which is sailing on a purely commercial mission is captured by a belligerent, the captain and the members of its crew

¹ See annex 47.

² Annex 45, *supra*.

shall not be made prisoners of war, on condition that they promise under oath not to serve against the capturing belligerent as long as hostilities last. Thus, the neutral member of the crew must promise not to serve on board an enemy vessel, whether merchant vessel or war-ship; an enemy member of the crew, on the other hand, must promise not to render any service connected with the hostilities for the belligerent State of which he is a subject or citizen. A belligerent State is forbidden knowingly to employ an individual in violation of such a promise.

Annex 48

PROPOSITION OF THE BRITISH AND AUSTRO-HUNGARIAN DELEGATIONS

Draft Regulations concerning the crews of enemy merchant ships captured by a belligerent

When an enemy merchant ship which is sailing on a purely commercial mission is captured by a belligerent, the neutral members of its crew shall not be made prisoners of war.

The same rule shall apply in the case of the captain and officers, if they are subjects or citizens of a neutral Power, provided they formally promise in writing¹ not to serve on an enemy vessel while the war lasts.

The captain and the officers and the members of the crew who are enemy subjects or citizens shall not be made prisoners of war on condition that they engage by formal written promise not to undertake any service connected with the war operations while hostilities last. A belligerent State is forbidden knowingly to employ an individual who has been released under the above-mentioned conditions.

[1176]

Annex 48 a

Draft Regulations on the status of the crews of enemy merchant ships captured by a belligerent

ARTICLE 1

When an enemy merchant ship is captured by a belligerent, such of its crew as are subjects or citizens of a neutral Power are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise subjects or citizens of a neutral Power, if they promise formally in writing not to serve on an enemy ship while the war lasts.

¹ The words "in writing" were added to the draft on the proposal of Mr. FUSINATO (minutes of the seventh session of the committee of examination).

ARTICLE 2

The captain, officers, and members of the crew, when enemy subjects or citizens, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of war.

ARTICLE 3

The names of the persons retaining their liberty under the conditions laid down in Article 1, paragraph 2, and in Article 2, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

ARTICLE 4

The preceding provisions do not apply to ships taking part in the hostilities.

[1177]

**EXEMPTION FROM CAPTURE OF COASTAL FISHING BOATS AND
CERTAIN OTHER VESSELS IN TIME OF WAR**

Annex 49

PROPOSITION OF THE PORTUGUESE DELEGATION

*Coastal fishing boats*¹

ARTICLE 1

The citizens or subjects of a belligerent State shall be permitted to carry on the industry of coastal fishing by means of apparatus or boats suitable for this purpose in the territorial waters and in the usual fishing zone on the coasts of the country to which they belong.

These boats may not, however, approach enemy war-ships or hinder in any manner whatever their tactical maneuvers or evolutions.

ARTICLE 2

Boats engaged in deep-sea fishing as well as those which may happen to be, except under special circumstances caused by the sea and the wind, outside of the zones mentioned in the preceding article, shall be considered enemy merchant ships in all respects.

ARTICLE 3

All fishing boats which, taking advantage of the immunities in Article 1, shall have entered into the service of a belligerent squadron and in that way shall have taken part in hostilities, shall be considered war-ships.

ARTICLE 4

When the outcome of an immediate military operation requires it, fishing boats may be detained by the enemy for a certain period of time.

Annex 50

PROPOSITION OF THE AUSTRO-HUNGARIAN DELEGATION

Coastal fishing boats

As is the case with coastal fishing boats, boats and barks engaged in the territorial waters of certain countries in the transportation of farm products or in small local business are exempt from capture.

¹ See annex 51.

[1178] Only in cases where military reasons require may the said boats and barks be requisitioned, in consideration of an indemnity, in conformity with the provisions in force respecting war on land.

REASONS

This proposition contemplates only boats and barks of small dimensions intended for the transportation of farm products or of passengers along steep coasts or between the coast and islands lying in front of it, or in the archipelagoes, or, finally, in the channels of flat coasts.

Without, on the one hand, causing any considerable damage to the commerce or resources of the enemy State, and without, on the other hand, bringing any advantage to the captor which is worth considering, the capture of these vessels would in reality only cause injury to the sailors, the islanders, or the inhabitants of the coast, all of whom are in a very precarious state of fortune, reduced as they are to the bare product of their trade.

It would seem, therefore, to be required in the interest of humanity to prohibit the capture of the boats and barks in question, except in case of military necessity. But even in this last contingency capture should be allowed only in consideration of an indemnity.

Except for these humanitarian sentiments, capture of the said vessels would clearly seem to be illogical, if this measure is considered from the standpoint of the principles governing war on land.

For, if the coast should be occupied by land forces, the boats and barks in question, being private property, necessarily are exempt from capture, and may, at most, be requisitioned.

Also it is impossible to find a logical reason which might be invoked to justify naval forces that have occupied territorial waters to proceed to capture or even to destroy the said vessels, without deriving any advantage therefrom.

Annex 51

PROPOSITION OF THE PORTUGUESE DELEGATION

*Amendment to its proposition concerning coastal fishing boats*¹

Vessels actually engaged in coastal fishing operations within the usual zone or engaged in small coastal business are exempt from capture.

This exemption ceases to apply whenever there is reason to suspect any participation in hostilities, such as refusal to obey the injunctions of a belligerent forbidding temporarily their approaching a certain zone, transportation of contraband, espionage, the fact of being armed or of having on board apparatus or signals which are not in use amongst fishermen. .

¹ Annex 49, *supra*.

Annex 52

[1179]

PROPOSITION OF THE BRITISH DELEGATION

Amendment to the Austro-Hungarian Proposition¹ concerning the treatment to be accorded coastal fishing barks

A belligerent is forbidden to make use of fishing barks belonging to his own subjects or citizens for the transportation of munitions of war, or to collect or transmit information as to the movements of the enemy, or to arm them for attacking the enemy.

A belligerent is likewise forbidden to employ enemy coastal fishing boats, which he may have requisitioned, for the purposes enumerated in the foregoing paragraph.

Annex 53**PROPOSITION OF THE NORWEGIAN DELEGATION**

Amendment to the Austro-Hungarian Proposition¹

In case military reasons require, the said boats and barks may be requisitioned in consideration of an indemnity equivalent to the entire value of the boat or the bark increased by 10 per cent. This indemnity shall, so far as possible, be paid in cash; if not, it shall be evidenced by a receipt. Requisition shall not be claimed except under the authorization of the commanding officer of the naval force present.

Annex 54**DRAFT PROVISION ELABORATED BY MR. FROMAGEOT***Relative to fishing boats*

Fishing boats engaged exclusively in coastal fishing or in small local business are exempt from capture, as well as their gear, appliances, and apparatus

This exemption ceases to be applicable to them the moment they take part in any way in hostilities.

If military reasons require, the said boats may be ordered away by the belligerent, or may be temporarily detained or requisitioned in consideration of an indemnity.

Boats thus requisitioned may in no case be used in battle.

¹ Annex 50, *supra*.

[1180]

Annex 55**PROPOSITION OF THE JAPANESE DELEGATION**

Amendment to the draft provisions concerning immunities for coastal fishing barks,¹ elaborated by Mr. Fromageot.

Add as a last paragraph :

Belligerents are forbidden to make use of fishing barks for military purposes under the disguise of their peaceful character.

Annex 56**PROPOSITION OF THE ITALIAN DELEGATION**

Vessels engaged in scientific, religious, and philanthropic missions

Enemy ships engaged in scientific, religious, and philanthropic missions shall not be captured.

The State to which the vessel belongs must notify the opposing State to this effect, which latter shall furnish a safe-conduct indicating the conditions of exemption and shall take the necessary steps to assure its being duly respected.

Annex 57**DRAFT PROVISIONS**

Relative to the exemption from capture of coastal fishing boats and certain other vessels in time of war

ARTICLE 1

Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

ARTICLE 2

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

¹ Annex 54, *supra*.

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